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International Court of Justice

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OFFICIAL TRANSCRIPT OF THE INTERNATIONAL MILITARY TRIBUNAL IN THE MATTER OF THE UNITED STATES OF AMERICA, THE FRENCH REPUBLIC, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE UNION OF SOVIET SOCIALIST REPUBLICS AGAINST HERMANN WILHELM GOERING, ET AL, DEFENDANTS, SITTING AT NURNBERG, GERMANY, 22 JULY 1946, 1000-1700, LORD JUSTICE LAWRENCE PRESIDING.

THE PRESIDENT: The Tribunal understands that the British Prosecution will answer on behalf of all the Prosecutors with reference to the documents for translation of the organization of the SS and the Political Leaders, so shall we deal with those first ?

MR. GRIFFITH JONES: My Lord, I am myself dealing with the documents for the Political Leaders, and my friend, Mr. Ellyn-Jones, is dealing with those for the SS.

Perhaps, it would be convenient for the Tribunal to take the documents for the Political Leaders first.

THE PRESIDENT: Yes.

MR. GRIFFITH JONES: My Lord, I have spoken to Dr. Servatius, who represents the Political Leaders Corps, and we have agreed on the documents which he should submit in his final book. I have had lists printed, which show the documents which we have agreed.

Originally he has submitted six document books, with a total of over 250 documents, some of considerable length. We have agreed from those that a total of 90-Odd documents should be included in the final book, and of those 90 we have only the passages, certain passages in them, to be translated. I have a copy of the document books which have been marked, the passages which we agree, and the remainder, of course, would be excluded.

THE PRESIDENT: What length will the document book be ? Can you tell at all ?

MR. GRIFFITH JONES: Except that there will be about -- nearly 100 exhibits, but they will be quite short, the majority of them. The longest, I think, is of two pages, and the remaining documents are just short extracts, perhaps a paragraph or two paragraphs.

THE PRESIDENT: Yes.

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MR. GRIFFITH JONES: Perhpas I might say this : Dr. Servatius had included in these books a number of affidavits which we have excluded because we understood the Tribunal desired affidavits to be heard before the Commissioners. He had also included a number of quotations from Mein Kampf. Those if the Tribunal agree, we have excluded because we thought that the Tribunal had their own copy of Mein Kampf and it would save work in the translating and printing departments.

For the remainder, much of the matter that was suggested was cumulative, and Dr. Servatius, I think, quite agrees that what we have put down now in Column A will meet his purpose.

There are, I understand, talking to him just before the Tribunal sat this morning, there are certain amendments to this list which he desires to make. He desires to include in Column A documents 68, 69, 50 and 162, which at the moment are excluded.

My Lord, perhaps it would be conveninet if Dr. Servatius and myself discussed the matter further, and perhaps you would entrust us to come to some arrangement about the inclusion or exclusion of these documents.

THE PRESIDENT: Yes, certainly.

MR. GRIFFITH JONES: I do not know whether Dr. Servatius wishes to say anything.

DR. SERVATIUS: (Counsel for Political Leadership Corps) Mr, President, I am agreeable to this arrangement, and these minor questions which still require clearing up shall certainly be cleared up by myself in collaboration with the Prosecutor. The books will probably then be reduced from six to two. In other words, there will be two document books left.

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THE PRESIDENT: Thank you.

Yes, Mr. Elwyn Jones ?

MR. ELWYN JONES: I f Your Lordship pleases, with regard to the SS documents, Dr. Pelckmann and the representatives of the prosecution have reached an agreement as to 99 of the documents. It has been agreed that 22 should be excluded. With regard to the others, some are to be included in toto and as to the others only extracts are to be included.

As to documents 31 and 32, Dr. Pelckmann indicated that he was reconsidering his application with regard to those two documents, and it may therefore, be possible that Dr. Pelckmann, will have some observations to make to the Tribunal with regard to them.

With regard to six of the documents, however, the prosecution and the defense have not been able to reach an agreement. Dr. Pelckmann insists that those documents are necessary for his case, and it might, therefore, be convenient for me to indicate to the Tribunal the prosecution's objections with regard to those six documents.

The first is document number 69, which is an extract from a speech made before the first meeting of the Reichstag, after the Nazi seizure of power, by the Social Democrat leader Wells. This extract states that Wells' party favored the plea for national equality and denied Germany's war guilt.
I submit, on behalf of the prosecution, that that extract is wholly cumulative There is an abundance of evidence of that kind before the Tribunal already. It is in any event, I submit, not relevant to the SS case.

THE PRESIDENT: Germany's war guilt, at what time ?

MR. ELWYN JONES: With regard to the war before the last one.

THE PRESIDENT: Yes.

MR. ELWYN JONES: I finally suggest that if that document is admitted by the Tribunal, then it would be proper in the interests of historical truth, for the extract to be continued to include the severe criticism of the Nazi Party made by Mr. Wells.

The next document is document 85, which is an extract from the Volkischer Beobachter giving a quotation from William Randolph Hearst's alleged statement to the defendant Rosenberg on the 3rd of September, 1934, to this effec

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When that distinguished gentleman was in German three years ago there was the greatest disorder threr; to day, the 3rd of September, 1934, under Hitler's leadership, Germany is a country of order.

The Tribunal will remember that this date was about nine weeks after what even Himmler has described as the appalling murders of the 30th of June 1934.

I respectfully submit that that extract is, again, cumulative, irrelevant and finally, is of no probative value whatsoever.

The next document is document 86, which is an extract from the Volkischer Beobachter purporting to be an American athlete's impressions of a journey through Europe in 1934, He states that he is satisfied with what he saw in Germany. Again, I submit that that is cumulative, irrelevant to the SS case, and of no probative value.

The next document which is in dispute is document number 96, which is an extract from a book by an author alleged to be an American, which was significantly published in Germany in 1935. It is a long extract dealing with concentration camps. It describes a visit by the author to Oranienburg concnetration camp, in which he refers to the modern sanitary installations there bedrooms which are apparently as good as those of the American army; the prisoners apparently ate exactly the same dinners as the camp commandants and the SS guards. The author says that they had three rich meals every day, naturally without luxury, and he goes on in that vein. I do submit that that extract is of no probative value whatsoever.

There are, finally, two further documents, 101 and 102.

Number 101 is an extract from an American magazine purporting to describe the result of certain experiments carried out by American scientists with a vaccine said to be immunizing.

Number 102 is an extract from a book, "An American Doctor's Odyssy", referring to further experiments with agents said to be immunising and to other experiments in connection with the beri-beri- disease.

The prosecution does not, of course, in any way admit the truth of the facts set out in these extracts, but I submit that even if they were true they have only a tu quoque relevancy, and I submit should not be included in the documents for the SS organization.

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Apart from those documents, the defending counsel and the prosecution have reached an agreement and there is no more to say, My Lord.

THE PRESIDENT: The Tribunal would like to hear Dr. Pelckmann.

DR. PELCKMANN: Mr. President, I have to occupy myself with those various documents which have just been objected to by the prosecution. First of all, I refer to document 31 and document 32.

Documents 31 and 32 deal with the question whether the SA and the SS had demanded that students should enter the SA and the SS. This is a question which affects the SA. In the first place, the SA have not yet completed their collection of documents. I think these documents are going to be submitted by the SA, and I shall therefore put them aside for the moment.

What is up for debate is the question of the remaining six documents. Let us first come to document number 69.

I should like to say something in principle with reference to the documents. The documents do not, by any means, deal with the question whether objective truth is contained in them, or whether they contain objectively the truth. They are merely submitted in order to point out how the readers had to be of the impression that true facts were being represented, and these facts were decisive for the formation of an opinion on the part of the German people as well as, of course, the members of the SS who were integral parts of the German nation, just as they were vital for the formation of an opinion on the part of a Party member or a non-Party member.

As to the documents dealing with the attitude adopted in our country, I believe that matters will have to be looked at from a different point of view in this connection than in connection with the individual defendants. The attitude adopted abroad cannot be relevant with reference to individual defendants because the prosecution are charging, with reference to a major portion of the defendants, that it will have to be taken for granted that the majority of the defendants deceived foreign countries.

With reference to the masses of the population, however-- and that affects the SS members also -- what had been thought and done abroad must be decisive with reference to the formation of an opinion as to whether the Nazi regime had been criminal or not. That is a general point of view which I think applies to all these documents.

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First, document 69 is a speech, as the prosecutor has said, by the Social Democrat member of Parliament, Wells. It is merely to show that this Social Democrat deputy himself, after the seizure of power by Hitler, did agree with Hitler in that onepoint, namely, that the Treaty of Versailles should be fought against. Objectively, therefore, I am not saying anything about the justification or non-justification of the Treaty of Versailles I am merely trying to show what the masses of the people were thinking and what the followers of Hitler were thinking -- Hitler, who had just come into power -- in particular the point that even a Social Democrat agreed to the Party program at that time.

For that reason I consider this document as being relevant, and particularly for the SS, because they, just as much as all the other Germans, would be an instrument for the formation of opinion.

THE PRESIDENT: Do you mean that the document says that the Treaty of Versailles should be fought against by war, or should be attempted to be changed by negotiations ?

DR. FELCKMANN: No, it does not by any means mean that the Versailles Treaty should be fought against by war.

Now, as to documents 85 and 86, they concern extracts from the Volkischer Beobachter.

Number 85 is a quotation from a statement by the head of a well known publishing house, wh , as far as I am informed, had considerable influence in America. That statement was made, as the prosecutor emphasizes quite rightly a few months after the blood purge of the 30th of June, 1934, that is, in September of 1934. That is to say, he states that he had been to Germany three years before and had found the greatest chaos, and that when he visited Germany under Hitler's leadership he found perfect order.

I think I had better emphasize once more that I am not referring to the objective facts ; I am stating that we are facing something here which was said by someone coming from abroad, who was of importance in the publishing field, and who speaks about conditions in Germany. That is, we are here concerned with something that was spread abroad and which was brought to the notice of the German people by means of the considerable National Socialist propaganda machine.

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Therefore the German people, and with them the masses of the members of the S could not assume anything other than that this publisher was confirming their true, honest belief of the time, namely, that here there was order and somethi was achieved toward peace.

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The second statement in Document 86 is something along similar lines. We have a report of the 27th of September headed, "America is participating in the Olympic Games. An American leader has investigated the question very carefully whether the American nation ought to participate in the Olympic Games, and he then made a report in America in which he made statements about his experiences in Germany. He now expresses himself as being very much in favor of American participation in the Olympic Games."

The expected result was that the committee made a decision according to which America would participate in the games.

Here again I see a confirmation, an emphasis and a strengthening of German public opinion, which also applies to the masses of the SS members, meaning that a country which was absolutely positive in its attitude towards the new Germany was announcing its agreement to the trend. I beg you not to forget that we are here particularly concerned with various years and various periods during the discussions before this High Tribunal about the principle questions against the organization. It has been pointed out that various periods would be of importance. You must be aware of the fact that, particularly since the SS after 1933 was increasing its membership number rapidly, it must have been very important that countries abroad, particularly during the years after the seizure of power, would render testimony of one sort or another the purpose of which, I submit, was to indicate its agreement to the trend.

I regret that I have been a little more lengthy in my explanation than was expected; but that, of course, was necessary because the principle line of the defense of the organization has not yet been discussed before this High Tribunal.

Then we come to Document No. 96. Here again it is a voice from America. The American journalists, of course, are not in a position to investigate what qualities American journalism might depict; but again the objective importance is that it is the voice of an American journalist whose comments were published by a well-known German publisher in a book which had a tremendous number of sales. This American journalist is describing, only on the pages which I am quoting, among other things the conditions in Germany, and among them the conditions in concentration camps. 13938

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To summarize then, they are described as not being unsatisfactory, and I am of the opinion that again this, in 1935, was of importance to the question.

THE PRESIDENT: Could you tell the Tribunal the name of the journalist?

DR. PELCKMANN: Yes; his name is "Doug" Brinkley, for Douglas Brinkley -- D-O-U-G-L-A-S B-R-I-N-K-L-E-Y.

THE PRESIDENT: Would you spell it again?

DR. PELCKMANN: Douglas -- D-O-U-G-L-A-S; Brinkley -- B-R-I-N-K-L-E-Y. I had already said that I know this man even less than the Judges. But you have to realize that after all this was published in Germany; and the average German is hardly concerned with respect to an American journalist whether he is only a lesser-known American journalist.

At any rate, he speaks in detail about conditions in concentration camps. And as far as the knowledge of the Germans in Germany and in the German SS, in particular, goes, this statement must be relevant, because during the taking of evidence, even before the commissions, I have shown, or shall show, that knowledge of conditions in concentration camps was confined to a very small circle who were occupied with these camps.

Finally, Documents 101 and 102. Here we are concerned with the question of the medical experiments on living human beings. First of all, I should like to say that I do not by any means represent the view that experiments undertaken in concentration camps conform with the principles of humanity. Without detailed evidence, I am not capable of passing judgment on this point; but I am establishing from scientific publications of recent date that the question of whether experiments leading to the death of human beings had to be carried out on tens of thousands to save the lives of tens of thousands or hundreds of thousands of human beings, is, at least, contested in scientific circles, and, as I have shown by means of these documents, has certainly been affirmed by well-known American and British scientists.

In this connection, I am assuming that internees in concentration camps, as I have been trying to prove in the commission hearings, were volunteering for such experiments. I am pointing out, however, that the proof that such experiments were carried out abroad is being furnished, in my opinion, by the

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wording of these statements; and the experiments were carried out on people who did not volunteer for these experiments.

THE PRESIDENT: Would you mind pausing there? I thought you said that they had volunteered for it.

DR. PELCKMANN: I said that these documents do not show clearly that experiments made abroad were made on volunteers, whereas I am alleging, I must state, on testimony given up to now, that experiments in concentration camps were carried out on volunteers.

THE PRESIDENT: I was only asking you what these documents that you are speaking of, 101 and 102, said. Did you say that they show that the peopl who were experimented on volunteered for the experiments?

DR. PELCKMANN: No. I said, Mr. President, that one or the other of the documents states quite clearly what the position was. One document seems to indicate that the people did not volunteer. What appears of more importanc to me is that --

MR. ELWYN JONES: If the Tribunal please, I do not think that the defending counsel's statement should go without challenge. It appears from the document 101, the report from the magazine, which is not a scientific magazine -- it is "Time" magazine, which I understand is not a work of science - that the extract is silent on the question whether the persons who were used for these experiments were volunteers.

The second extract from Document 102 states quite clearly that the subject of the experiments were volunteers.

DR. PELCKMANN: Quite right. The second document deals with voluntary experiments. The first document, however, leaves the question open. But I am concluding from circumstances which the documents show that it does not seem to be absolutely certain who were volunteers. An extract from a fairly recent publication, "Time", of the 24th of June, 1946, deals with a new medical fight against tuberculosis. American scientists have carried out experiments with tuberculosis innoculations on 3,000 Indians, half of whom had been innoculated, or vaccinated, with a drug. The others received a harmless vaccination. Among the vaccinated group, 40 tuberculosis cases developed; of the non-vaccinated group, 185 cases developed, and 38 died. Furthermore,

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experiments were carried out on people who did not suffer from tuberculosis.

The other document is a German translation of an American book, "An American Doctor's Odyssey"; and in that it is said that experiments were conducted on criminals with respect to the disease beriberi, and that often the sentence against the criminals was changed because of participation in this experiment. These experiments were made by giving some of the inmates polished rice and the second half of the inmates unpolished rice. Then the two groups were exchanged, and the sick ones became healthy and the healthy ones sick. The effect of these experiments and of the disease, in general, is very strong. The subjects very often die of a weak heart.

I quote from this book: "I remember the impression made upon me by the huge hospital for beriberi incurables at Singapore, where these poor people were crawling around on their hands --"

THE PRESIDENT (interposing): We do not need all the details of it.

DR. PELCKMANN: In other words, I am merely going to say that at least we are concerned here with the contested scientific opinion--

DR. ELWYN JONES: I am intervening again. But such a sinister implication is being given by the alleged purport of these extracts by defending counsel that I really must protest. The report that is given is of the symptoms of beriberi disease; it is not an account of the result of these experiments at all. The experiments took this form: That some Malayans were tested with their ordinaty diet of polished rice, which is said to bring on beriberi; other prisoners were tested with a diet of unpolished rice. And it was pro en that a diet of polished rice, which is their usual diet, brought on beriberi. There is no sinister import. There is no Dr. Rascher element about this.

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DR. PELCKMANN: I should only first of all finally come to the objective angle. I am alleging, or the Defense is, that these experiments too were kept extraordinarily secret.

THE PRESIDENT: We have got the essentials of the argument.

DR. PELCKMANN: Thank you.

THE PRESIDENT: We will now hear from the United States Prosecutor with reference to the General Staff and High Command, the SD, and the Gestapo.

MR. DODD: Mr. President, with reference to the SD and the Gestapo, we have come to a complete agreement with Defense Counsel so there is no contest concerning the documents. They number some 150 pages for the Gestapo, and some 80 pages for the SD.

With reference to the High Command and the General Staff, we have not been able to agree on a few documents. In the first document book No. 1, Document No. 5, we have objection to its translation certainly, because it has to do with a certain General Busse and concerns the political feelings of some of the generals towards National Socialism. It is simply his opinion and does not purport to be anything more. There are graphs and charts and so on attached to them and they are made to appear as if they are based on the opinions which General Busse gathered through conversations with other people. There is nothing to show that he is in a position to know of these things.

Document No. 8 we also object to because again it is an instrument based upon the opinion of General Winters. It is a collection of the opinions of other people. Insofar as we can tell he made some kind of a poll, a private poll of his associates, and these he collected into an affidavit.

THE PRESIDENT: What is the nature of the actual document? Is it a publication?

MR. DODD: No, sir, it is not a publication. It is a statement, a sworn statement, of General Winters.

THE PRESIDENT: Is it sworn to?

MR. DODD: Yes, sir, it is.

THE PRESIDENT: Busse's and Winters' statements, they are both sworn to?

MR. DODD: Yes, sir, they are.

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THE PRESIDENT: And what's the date of them, 1946?

MR. DODD: Yes, sir, very recent. Some time in June, 1946.

THE PRESIDENT: What's the date of that one?

MR. DODD: One of them is just within the last two months.

Document No. 9 is of the same character. Again it is a statement based on written opinions. The individual who makes the affidavit considers this and inquires of other people.

Document No. 11 is a newspaper article about General Marshall's report to the Secretary of War of the United States. That has already been introduced here by the Defense and our objection is somewhat technical but nevertheless necessary. We feel that a newspaper extract should not be used, particularly since the document is in evidence. It is Jodl Exhibit-56. We have not been able to make that clear to Defense Counsel so far.

Document No. 13 is again a political opinion or statement of General Winters based on another one of his polls which was conducted among his fellow prisoners concerning their attitude toward the so-called Commissar Order, and besides, this matter has been handled before the Commission established by the Tribunal. This matter was objected to before the Commission and the objection was sustained. In any event, we also object here. We object here because it is of no value whatsoever.

Document No. 20 is a letter written by a General Seidler.

THE PRESIDENT: One moment, Mr. Dodd.

Go on, please.

MR. DODD: The letter written by Dr. Seidler, of course, is not a sworn statement. This is document No. 20 and we object to it on that ground. Besides, we have very grave doubts about its value in any event.

Document Book 2 contains one document which we object to. That is Document No. 15. It is not an affidavit, but instead, it is an unsworn letter from General von Grevenitz to General von Kleist under the date of June 24, 1946, which, in our judgment, is of no value and we do not see that it would be helpful in any event to the Tribunal.

Other than that, we have no differences.

THE PRESIDENT: Mr. Dodd, will you tell us with reference to these

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documents that you object to, how long they are?

MR. DODD: They average, from what I see of the German text, two to three pages and attached to some are drafts. Do you mean the whole, in total?

THE PRESIDENT: Yes, take them in order, starting with No. 5.

MR. DODD: That has two pages. It is the statement with the draft attached to it.

THE PRESIDENT: What about Winters, No. 8?

MR. DODD: That's seven pages and two pages of drafts, which makes it altogether nine pages. The newspaper article about General Marshall's report, I don't know. So far, only one typewritten page. Document No. 13 is a ten page document. General Seidler's letter is one page, and Document No. 15 is only one page. It is also a letter.

THE PRESIDENT: Thank you. Now, Dr. Laternser.

DR. LATERNSER: There remains yet certain documents about which there are arguments. First of all, Document No. 5. The table submitted with No. 5, on page 29 only refers to historical facts which are graphically represented in that table in order to show their extent and the effect they had amongst the military leaders to which they refer. The affidavit which is attached, the affidavit of General Busse, is not, as the Prosecution alleges, to state the facts which are historically known in any case, or to prove them, but it is merely to prove that table. It is not, therefore, a private opinion on the part of General Busse. The admissibility of that table can not, therefore, be objected to.

With reference to Document No. 9, I shall state my opinion collectively because the objections raised against it are similar. The list contained therein is meant to facilitate the judgment passed by this Tribunal against persons we are concerned with. We are not concerned with written passages, but we are concerned with lists and I am only too willing, should the document be approved, I am only too willing to furnish the numbers of that list.

Document USA-778 is the basis for those two lists and was submitted in February, 1946. This document contains the names of all the persons who are supposed to be subjects of the indictment and it also contains the period during which they supplied them. This prosecution document, USA-778, does not

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state a source on which these statements are based but they are merely allegations on the part of the Prosecution, therefore. I have never used this document, USA-778, in asking General Winters to compare these lists which I am submitting and contrary to the objection of the Prosecution, the Tribunal will be in a position to judge particularly well what the situation was since General Winters appeared personally before the Tribunal on behalf of Col. General Jodl. The actual lists contained names of dead persons and also names of persons who occupied temporary positions but not the names of the persons who occupied the final positions. According to the list you arrive at the number of 56 people so that the actual judgment would therefore have to refer to 56 people's lists. They are also listed in this document while commanders were removed because of differences of opinion.

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List no 9 gives the names of 31 people who, during less than six months, occupied positions which the Prosecution have referred to. That document is relevant because fo the alleged conspiracy. If, therefore, the Tribunal desires to have a good factual basis for judging the circle of persons indicted, then these lists would have to be accepted. The lists already accepted and submitted by the prosecution, namely Nos. 6,7 and 8, can only refer to the same or similar sources as the list which I am submitting, but the lists of the defense are giving the origins and also the sources and can be checked. Had I used the same way as the Prosecution, then I would merely have submitted the lists without adding and affidavit to them, a certificate; and therefore I apply to have these documents admitted.

No 11 exists as Exhibit Jodl No. 56 in the same form as has been accepted by the Tribunal, a fact which, incidentally, I referred to immediately when talking to the Prosecution, and my attempts to make the position clear were unsuccessful.

THE PRESIDENT: No. 11 we understood was a newspaper report with reference to General Marshal's report.

DR. LATERNSER: When that objection was brought up I immediately pointed out that the same document to which I will refer has already been submitted on behalf of the defendant Jodl. That is the Marshal report. In other words. I withdraw this document of mine.

THE PRESIDENT: You are withdrawing it? I see.

DR. LATERNSER: Yes, as the same document is already in the possession of the Tribunal. I merely wanted to include it in my book for the sake of completeness. Then I merely want to remark, Mr. President, that attempts to make this clear to me were not necessary on the part of the Prosecution, because when arguments are so simple I usually understand them fairly quickly.

Document No. 13 again is based on USA 778 as far as the circle of indicted persons is concerned. This list, also compiled by General Winter, is meant to prove the clear-out attitude on the part of the generals with reference to the commissar order, which I want to show clearly. As that list is based on the list submitted by the Prosecution and the affidavit which is added to it show the exact origin and authors sources, the document can be checked for its value. The objections on the part of the Prosecution may detract from its value as

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evidence, but the documentary character of the document cannot be destroyed, and there again, that list would have to be admitted.

THE PRESIDENT: Hasn't Document No.13. that is to say the subject of the attitude of the generals to the commissar order, already been dealt with before the Commission?

DR. LATERNSER: Yes. Mr. President, but examination of witnesses and submission of affidavits cannot give the same satisfactory picture which I am attempting by means of submitting this document. This document contains the names of the generals who belonged to that so-called group, and I have marked a paragraph which deals with the question of when the order was received and another paragraph which deals with the question of whether the order was carried out, and the facts which General Winter is stating in this list are explained by him in his affidavit which is attached to the list itself; and he goes on to quote the sources from which he had gained his knowledge, so that I could investigate the sources and by that increase the evidence value.

THE PRESIDENT: Dr. Laternser, you have called a certain number of witnesses before the Commission, have you not?

DR. LATERNSER: Yes. I had eight witnesses.

THE PRESIDENT: I suppose all of them, or almost all of them dealt with this subject. You put a certain number of affidavits and those affidavits have dealt with this subject. have they not?

DR. LATERNSER: Yes.

THE PRESIDENT: How many affidavits have you put in before the Commission?

DR LATERNSER: I cannot, Mr. President, give you the exact number at the moment. There are only two affidavits --

MR. DODD: There were 72 of them. Mr. President. He put in 72 of those affidavits.

THE PRESIDENT: Well, isn't this really an attempt to extend and make more exhaustive the proof which you are submitting?

DR. LATERNSER: Mr. President, In connection with this commissar order, we are certainly concerned with a criminal order, and I was merely trying to show to the Tribunal with this list and to make it particularly clear how exemplar on this point the high Generals had conducted themselves; and I had summarized the outcome of that part of the evidence in this list which was compiled by

General Winters so that the High Tribunal will be in a position to judge whether truth is contained in this list or not. I am merely trying to say that the objections by the prosecution are merely affecting the value of this document but not the document in its admissibility, which I apply for.

THE PRESIDENT: But if you put in 72 or 82 affidavits before the Commission, why shouldn't you put in this document before the Commision?

DR. LATERNSER: Well, but here we are not yet concerned with affidavits. Up to now only affidavits have been submitted whereas here. in Document no,13, we have the list, the most important thing, and the affidavit which is attached is merely an appendix to that list. It is the explanation to the list, which is necessary. The main point of this document, therefore, is the list and not just the explanation contained in the affidavit, so that therefore there would then be room before the Commission for that.

THE PRESIDENT: Yes, Dr. Laternser, but it doesn't make it inadmissable before the Commission that it is an affidavit exhibiting a list. It could have been put in before the Commission, and if it had been put in before the Commission it would have been brought to our notice in the course of everthing that goes before the Commission. Also, it is pointed out to me of all documents, they could all have been put in before the Commission.

DR. LATERNSER: No, Mr. President, that point of view can't be right. Up to now we could merely submit affidavits to the Commission and not documents. The documents were to be included into the document books, and that is what we are negotiating for today. This no. 13 is a document itself, it is a list, whereas the affidavit is purely a subsidiary document. This is merely meant to explain. Will you please make a decision?

THE PRESIDENT: Well, we hear what you say and we will consider the matter.

DR. LATERNSER: Then I wish to speak about Documents No. 15 and No. 20. Both are letters, the admissability of which is of importance to me particularly Frequently ordinary letters have been submitted in evidence during this trial. I will remind you in particular of the Reiner letter in the case of the defendant Dr. Seyss-Inquart. Then there is the letter of Colonel General Seitler, which is No. 20. This is of particularly great value to me because it shows that because of the efforts of a general who is indicted, the commissar order was rescinded. That is why this letter achives particular significance to me

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as defense counsel of the indicted group.

THE PRESIDENT: Will you give me the dates of the letters?

DR. LATERNSER: Yes, The letter is dated 8th of July, 1946, and it was addressed to me. That, Mr. President, is all I have to say to the objections raised by the Prosecution.

THE PRESIDENT: Thank you. Mr. Dodd, That concludes the arguments that we need hear this morning, does it not?

MR DODD: Yes.

THE PRESIDENT: Well, the Tribunal will consider your suggestions.

I call on Dr. Steinbauer for the defendant Seyss-Inquart.

DR. STEINBAUER: Gentlemen of the High Tribunal, on Friday I had got as far as Page 71, and with the permission of the Tribunal, I should like to continue on that page of my script.

From what has been said it is shown that the Reich Commissioner has to assume only a limited responsibility for the German Police, that is to say, in so far as he exerted it for the carrying out of his orders in civilian matters. When the Reich Commissioner called upon their help, the police customarily first got in touch with Himmler about the matter in most cases. But in all matters which fell within the competence of the police, the Reich Commissioner could neither issue orders to them nor intervene "de jure" in their activity, This must absolutely be kept in mind when judging the Jewish question, the concentration camps, and the deportations.

The admissibility of special courts and police protective custody is even recognized in the Dutch governmental report. The arrests and management of concentration and prisoner camps was the affair of the police. As explained in detail by the defendant when examined as witness, he went, as Wimmer and Schwebel also confirmed, to great trouble to put an end to abuses in the camps which became known to him. We shall hear only briefly refer to the treatment of the so-called Dutch-Indian reprisal hostages with whom the defendant concerned himself considerably and finally the fact that he succeeded in having the members of the clergy who had been imprisoned in the Reich enabled to return to the Netherlands.

After having thus briefly sketched the position of the police and their tremendous power I shall go over to one of the main points of the Indictment, the Jewish question.

H0185 - 0020

H0185-0021

In the trial brief it is stated by the Prosecution that Reich Commissioner Seyss-Inquart alone is fully responsible for the execution of the Nazi program for the persecution of the Jews in Holland. That in his Amsterdam speech before the members of the NSDAP, on 13 March 1941, he himself had declared :"For us the Jews are not Dutchmen; for National Socialism and for the National Socialist Reich the Jews are the enemy." In that speech Seyss-Inquart also explains why, as defender of the interests of the Reich, he believed he had to adopt that attitude against the Jews. He saw in them those whose influence on the German people would paralyze its will to resist and who would appear everywhere as the enemies of the German people. But from that very speech it can be established that Seyss-Inquart considered all measures against the Jews as safety measures only for the duration of the war. He speaks of his desire to create endurable measures during the period of thansition and that after termination of the occupation it would be up to the Dutch people to decide what the fate of the Jews was to be. It was quite natural and obvious that during the past was, as a result of the treatment they experienced in Germany and later in the occupied territories, the Jews, without distinction as to nationality, belonged among the most bitter enemies of National Socialist Germany. That had to be taken into account by every official who had to look after the interestsof the Reich in occupied territori This also makes the speech referred to in the beginning understandable. Therefore when Seyss-Inquart was commissioned by decree of the Fuehrer to preserve the interests of the Reich in Holland, he also had to adopt some kind of an attitude toward the Jewish question. It was his intention to remove the Jews from leading positions in the government and industry for the duration of the occupation, but otherwise to refrain from any further measures against them. Actually, he also instituted only such measures whereby the Jews were sent on leave or were retired.

In the meantime, the exclusive handling of the Jewish question, with full powers and for the entire sphere of German interests, had been transferred by Adolf Hitler to Himmler, that is, Heydrich, exclusively. Now, the Security Policenot satisfied with the dilatory handling of the Jewish problem by the Reich Commissioner, invoked their plenary powers and established an office in Amsterdam whose interference was the cause of constant frictions with the deputy of the Reich Commissioner in Amsterdam.

H0185 - 0022

The Security Police claimed they were unable to guarantee the safety of the Reich, the task entrusted to them, unless further measures were taken restricting the Jews in matters pertaining to economics and to their persnal liberties English and French people had been gathered in individual camps and had been driven over the obrder into the Reich, after their property had been confiscated as enemy property a treatment which Germans living abroad had likewise experienced in enemy countries. In particular, the Police pointed to the fact that very many Jews were actually involved, and often took leading parts, in all the more serious attempts at sabotage and other forms of resistance. Likewise, the Dutch Jews, whose ancestors had in part come from proud Spain, the greatest portion having come from Germany and the East as emigrants, had already been active in leading positions before the occupation in opposition to National Socialism in industry, but more especially in the press. When the enemy entered the country, they knew it would be a life-and-death battle and contrary to Shylock's words in the Merchant of Venice :"For enduring is the heritage of my tribe" they not only placed their property at the disposal of the resistance movement but also their lives. The Reich Commissioner also could not fail to pay heed to this fact. Because of the great number of persons involved a treatment of the Jews roughly similar to that of the English or the French or other enemy aliens by confinement in a camp was simply not possible. Measures affecting personal liberty of action were taken by the Higher SS and Police Leader as Himmler's direct subordinate, or by the Securit Police on direct order by Heydrich. At this point also belongs the introduction of the Jewish star, which the Dutch, by the way, did not consider a mark of defamation. At the same time that measures affecting the personal freedom of action were taken, the property of Jewish organizations and Jews was also taken under management. The Reich Commissioner appointed Dr. Boemker as his special deputy, with the task of supervising the measures taken by the Police -insofar as this was possible administratively- and to prevent excesses. As a matter of fact, he intervened a number of times and was able to prevent bad police measures.

The activity of the Reich Commissioner's office was largely concerned wi economic measures, and the description by the Dutch Government Commissioner f repatriation, USA 195, gives a clear illustration of the entire Jewish problem in Holland.

H0185-0023

The tables shows that the Reich Commissioner was able to delay measures against the Jews for almost a year and that really intensive measures did not begin until February 1941 with the formation of the Central office for Jewish Emigration which was ordered by Heydrich and under the supervision of SS Obersturmfuhrer (SS first lieutenant) de Funte. A comparison with measures taken against the Jews in Germany itself and in other occupied territories shows a pronounced uniformity, which likewise indicated that the measures in question were not taken by the Reich Commissioner but were measures taken uniformly by national offices, in other words, by the Police. The Reich Commissioner also saw to it that sequestration of Jewish property moved in orderly channels. When it finally came to the liquidation of property via orders from the Berlin Central Offices, liquidation proceeds were not confiscated but credited to the Jewish property custodian so that, finally, the Jewish administrative office had accumulated some 500 million guilders.

In order to put an end to the constant pressure and interference of the Police through Heydrich the Reich Commissioner together with Higher SS and Police Leader tried to stabilize the Dutch Jewish question by assembling in 2 camps, the Jews affected by the restriction ordinances where they were to live under their own administration. One of the camps was Westerberg where they had a Jewish camp police of their own; with regard to the outside the camp was under the supervision of the Dutch Police. When, in the Spring of 1945, it was occupied by the Canadians, the English Radio reported that they found Jews housed there in good condition, contrary to other camps which were found outside of Holland. The second confinement camp was to be Vugth. Himmler made a concentration camp out of it. The Jewish community of Amsterdam was under the direction of Ascher, a merchant dealing in precious stones. Funds were made available to the Jewish community especially for school purposes; negotiations were carried out with firms to provide work in the Jewish quarters.

In the beginning of 1942 Heydrich, that is, Himmler demanded transfer of the Dutch Jews into assembly camps situated in Germany. Both invoked the plenary powers given them by the Fuehrer and pointed to the fact that sooner or later an invasion had to be expected. Holland seemed a suitable territory because the ports of Rotterdam and Amsterdam provided suitable bases for reinforcements and that from here was the shortest route that the British could

H0185-0024

take into the Ruhr region, the industrial centre of Germany. To permit so many people extremely hostile to Germany, to remain in a territory which would see future operations in the battle against Britain was inconsistent with the safety of the Reich. The Police persisted in its stand and the Reich Commissioner was able to intervene only by taking steps to make the evacuation by the Police more humane. The Reich Commissioner was able to bring about that thousands of Jews were exempted from evacuation and were so able to remain in Holland. The defendant had the internment camps inspected by his agencies and in particular corrected bad conditions through the intervention of the Christian church, insofar as this was within his power. The order for evacuation was not given by the defendant but by Himmler or Heydrich. The defendant did not even give his consent to the evacuation. As a result of steps taken by the defendant, a part of the Jews was taken to Theresienstadt considered a place of encampment, ostensibly under the supervision of international agencies, such as the Red Cross and where the Jews were said to be well treated. As a result of exemption regulations brought about by the Reich Commissioner, a great many Jews could be exempted from evacuation. The abovementioned Dr. Boemker was charged with supervision of the transport of Jews in Holland and it became possible to correct abuses repeatedly through Higher SS and Police Leader. The greater part of the Jews was taken to Poland and it is probably one of the most terrible sentences, found in USA 195 one of the documents submitted by the prosecution, which reads : Total number of those deported 117,000. After they had left Holland every trace of them was lost; they merged into a mass of deportees coming from all occupied countries and no longer could be identified as an individual group."

Now comes the cardinal point of the entire indictment, the dramatic climax in the trial against this defendant. Did the defendant know of the destiny of these many unfortunate and innocent people; did he intentionally approve of it or does he become guilty because he did not prevent it ? The defendant has again and again, even when questioned as witness under oath, solemnly declared that he did not know anything about this, and that he was of the opinion that the Jews would actually be resettled in the East for the duration of the war.

When the defendant once had the opportunity in the year of 1942 or 1943, on the occasion of a report to talk to Adolf Hitler himself, he turned the discussion to the Jewish question. When the Reich Commissioner pointed out that the evacuation of the Jews was causing serious unrests in the Netherlands, Adolf Hitler replied that he had to segregate the Jews as destructive elements from the body of the German people, and that he wanted to resettle them in the East. When Himmler, the Chief of the SS and of the German Police, was questioned by the defendant in the beginning of 1944, he replied to the apprehensions of the Reich Commissioner with the words, that he should not be worried about his Jews, his Dutch Jews were his best workers.

The representatives of the government sent into some of the camps returned with the reports that the Jews were doing well and that they were satisfied. News from the deportees also, arrived in the Netherlands at regular intervals, although they decreased later on. Today, when the heavy curtain which was spread over the horror of these mass murders has been lifted we know the connections and the truth. Especially by the conscientious researches in these trials, it has been established that Hitler and Himmler have undertaken in a practically fiendish way to obscure and to cover the knowledge of their cirminal intentions concerning the final solution of the Jewish question. When I read the Dutch report about the Jewish question for the first time, I myself was deeply moved. It is this document and the so-called Hossbach last will of Hitler from the year of 1937 which I have especially submitted to my client. Dr. Seyss-Inquart told me about the Hossbach document in which the evacuation of 1 million Austrians was demanded :"That he has never such an intention, I would never have participated."

When, I further presented to him the document concerning the Jews, he stated in a convincing way not to have known anything about the final solution and the happenings in the extermination camps . When I then expressed my opinion, why he did not quit, after he could not prevail with his views upon Himmler and his accomplices, especially concerning the Jewish question, he told me that, after all, he was a soldier and knew that a soldier must not desert in war time. He had come to the conviction that he, besides the other tasks charged to him, also remained on his post for the reason that something better would hardly have followed for the Netherlands.

H0185-0025

H0185 - 0026

In my duty as defense counsel and jurist, I can add the following : One could not count on the extent of extermination which the prosecution have mentioned. If it has taken place in the stated extent, these are actions of a special group of Himmler's hangmen which correspond to a desperate situation only. But in penal law, the principle applies that the causal chain is interrupted if an independant criminal act is interposed in the latter. This is the case here. Before I conclude the most difficult chapter of the entire accusation I should still like to examine the question, if the defense of the defendant that he actually could not have had any knowledge about the terrible crimes which happened in the extermination camps is, in fact credible.

THE PRESIDENT: Is this a good place to break off ?

(A recess was taken).

H0185-0027

THE PRESIDENT: I will deal with these documents. The documents objected to in the case of the SS, 69, 85, 86, 96, 101 and 102, are all disallowed.

In the case of the SD and the Gestapo all the documents are agreed.

In the case of the High Command, the Tribunal allows the documents 8 and 9 to be translated and put in the document book. No. 11 is withdrawn. Nos. 5, 13, 15 and 20 may be submitted to the Commissioners but they will not be translated for the document books. That is all.

Now, Dr. Steinbauer.

H0185-0028

DR. STEINBAUER: To this point I should first like to present the testimony of a French doctor who himself was a prisoner in an extermination camp for a long time. This is Goutbien, M.D., from Montgeron (Seine-et-Oise) who writes in RF 107:

"It is difficult for a normal man to conceive an exact picture about a concentration camp which is designated in the German language by the two letters K.Z.

"It is difficult for various reasons: first of all, a man educated according to the principles of our civilization which is completely ruled by the elementary Christian humanitarian doctrine cannot believe the truth of the statements made by the victims of so many atrocities; the sadism, the exaggerated refinement of the Nazis have tried to disguise their crimes in a hypocritic way, so that a foreigner who would have inspected a concentration camp two or three years ago would have been impressed by the order and cleanliness in it.

"If a jurist had examined the execution cases, he would always have found at least sufficient reasons, if not valid ones, for their justification. Finally, if a doctor had searched for medical documents, he could have very easily concluded normal causes of death.

"That is how heavy the curtain was, which covered the concentration camps, and which the SS kept carefully and jealously down. The SS tried to give a legal appearance to their crimes; the thing in question here is a characteristic appearance of Hitlerian hypocracy."

In a similar way the Jesuit father Kuhle also expresses himself in his book, "The Concentration Camps, a Question of Conscience for the German People," he writes, Page 19..."and he believed to be able to prevent the self-unmasking by an absolutely tight-ring of silence with which he surrounded his works. This ring was closed so tightly that a German had to travel abroad in order to learn something concrete about the camps and to read there about the "Soldiers of the Peatbog" (Moorsoldaten). At home books like these did not exist, and one learned only very little from mouth to mouth. Nobody got out of the worst camps, and the perpetrators of the crimes themselves were liquidated from time to time, so that they could not tell anything. But the few who got out of the more moderate camps were so

H0185-0029

much intimidated that they gave only quite general, obscure hints-quite enough, in order to create in the entire people a general feeling of horror of these mysterious places.

"But even the little which went from mouth to mouth never came to the knowledge of higher officials of the Third Reich. Because if they went after these things, the police learned about it and the latter then took care of it that the bearers of such "atrocity propaganda" kept silent. Therefore as time went on, one refrained from telling anything to such officials."

But the most important testimony is that of one who knows, who himself had an active share in the liquidation of the Jews. On 25 June 1946 Dieter Wisliceny, the special representative of Eichmann who was in charge of the liquidation of the Jews, was questioned as witness by the appointed judge of this Tribunal. He stated that commissions of the International Red Cross or foreign diplomats were guided to Theresienstadt, in order to simulate the normal status of the accommodation. The Jews who were brought to Auschwitz were forced to write postal cards before they were murdered; these postal cards were then mailed at long intervals, in order to create the impression that the persons were still alive. He invited different representatives of the press. To the explicit question, "Under whose jurisdiction was the Jewish question in the occupied countries, under the commander of the regular police, the Security Police, or the Security Service?" he gave the answer: "According to my knowledge, the Jewish question in the other occupied countries was an affair of the Senior SS and Police Officer, pursuant to a special order by Himmler."

In order to make the deception even more intensive, 500 Reichsmark was for instance demanded by the Slovak government for every Jew as settlement contribution. I have reproached the defendant with this, and he told me that Himmler also demanded from him a settlement contribution of 400 Reichsmark for every Dutch Jew. He as Reich Commissioner refused this in consideration of the incomplete statements concerning the actual settlement of the Jews and with the reference that the final settlement would have to be left for the time of peace.

H0185-0030

At his own initiative the defendant has also pointed during his examination individual cases of a... lization. The suggestions I made to have the letters written by Seyss-Inquart to Himmler procured as evidence show the following fact, in conjunction with the statement of the defendant.

Contrary to the statement of the then 18 year old informant Hildegard Konzo, Seyss-Inquart never reported through any sort of official channels to Himmler about the Jewish question.

Seyss-Inquart rather demanded of Himmler not to aggravate the situation of the Jews in the Netherlands any further, and he referred in this connection to the measures which had been carried out in the meantime against the Jews and which exceeded the measures in the Reich, pointing out on this occasion the cases of sterilization.

Seyss-Inquart immediately took a stand against the sterilization of women and stated to the Christian churches that no coercion must be exercised. As a matter of fact, no further cases occurred after a short period.

With respect to the case its..., the defendant can only be made responsible insofar as he did not take a stand against it immediately, without being certain, however, to be able to prevent the act. The reasons for the attitude of the defendant becomes evident from the letter whichwas requested as evidence. It was the worry that the situation of the Jews could be made worse and the supposition that these Jews would be spared further attention from the police in the future.

In any case, insofar as measures against the Jews originated from the defendant, they were issued only as measures against enemy foreigners for reasons which the defendant mentioned in his speech of 21 March 1941 in Amsterdam. Whatever happened beyond that took place on the express order of the Reich Central Agencies, especially Heydrich, and that primarily through organs of these Reich Central Agency themselves.

A further point of the Indictment is the claim that the defendant as Reich Commissioner, in accordance with the planned extermination and weakening policy toward the occupied countries, had deliberately neglected the food supply of the Dutch, which had finally resulted in a starvation-catastrophe.

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Claims to this effect appear to be refuted by the testimony of witnesses Dr. Hirschfeld and von der Wense, as well as by those of the defendant himself. The whole food supply machine remained from the very beginning under Dutch direction in the interests of the population, although it was known to the Reich Commissioner, that it was just in this field that leading cells of the resistance movement had established themselves. The food supply in the Netherlands was not assuredly not worse than in Germany, from where in particular bread-grains were supplied. As late as the year 1944, the food value consisted of 1300 calories, before that 2500 calories, to which there were still additions of the utmost variety.

The Reich Commissioner also succeeded in bringing to a halt the knapsack-traffic of the Wehrmacht which was mentioned in the cross-examination, through intervention with the Reich Food Administration, even if it was only in the year 1945.

To what extent the Dutch food economy was supported by the defendant, as for example by furthering the N.O. Polders, by countering the extremely great demands of the Reich is confirmed by the witness von der Wense.

That the Dutch manufacture of nitrogen could be reserved for Dutch agriculture until September 1944 is the exclusive achievement of the defendant. From autumn 1944 on, the situation in the field of food supplies deteriorated considerably. The country for a large part had become a war zone after the invasion, and the transportation routes had been smashed through innumerable air attacks. This had the result that a difficult food situation was caused, particularly in the West of Holland, where millions of people were compressed into a small area in three major cities. Considering the small number of occupation troops, it would have been a giant blunder in itself to drive these crowded masses intentionally to desperate resistance through starvation.

When in September 1944 a strike of railway workers and shipyard workers broke out, caused by the London government-in-exile, which was counting on a favourable conclusion of the battle near Arnheim and a German collapse in the very near future, then viewed from the standpoint of international law, this was an emergency in which the country had placed itself toward the occupant. It was natural that the Wehrmacht occupied all available shipping space in order to secure their food supplies for their own defense.

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In order to avoid repetition, may I refer to the testimony of von der Wense and Dr. Hirschfeld and state here as the most important fact that the witness Dr. Hirschfeld testified that the Reich Commissioner gave an order for rescinding the blocking of shipping traffic on 16 October 1944. He had been able to count on the fact that the blockade of four weeks, which was not planned as a reprisal measure, would not cause any damage because sufficient food-stocks were on hand or could be sent into Holland in the months of November and December. He actually effected the rescinding of the embargo at an earlier time, the establishment of a special transport organization and the importing of food stocks from the northeastern provinces by means of German transportation.

As the failure of the Dutch transport organization, the constant day and night attacks of enemy planes, sabotage of the resistance movement and last of all a great shortage of coal hampered the supply action, the emergency caused by the strike still cannot be in anyway charged against the defendant as a criminal offense.

In any case, the statistics presented by me have shown that during the entire period of occupation until the middle of 1944, the population steadily increased and that general living conditions under wartime considerations did not suffer a considerable deterioration at all.

As the food situation deteriorated more and more throughout the war, the defendant cared for the importing of food stocks on German transport trains and also furnished them for children, from German Wehrmacht stocks. He demanded supporting actions of the churches and of the Red Cross, although the Geneva insigne was repeatedly misused by the resistance movement. The Crown Prince of Sweden, as President of the Swedish Red Cross, expressed his special gratefulness to the Reich Commissioner. The Reich Commissioner finally contacted the Dutch government-in-exile through its trustees and in this manner initiated the conclusion of an agreement with the Allied Supreme Command, whereby the subsistence of Holland was secured and the occupation was effectively brought to an end.

In allied military circles at that time one still figured on 60 days' resistance. The German occupational troops in the Netherlands would certainly have been able to do this, although this would have caused the

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destruction of the country and its population.

I come now to the last point of the French Indictment, that of the floods and destruction caused by the occupying power. If the Prosecution had not brought up this point, then I as defense counsel would have discussed this matter before the Tribunal, because this matter especially gives the defendant the opportunity of appearing in another light, very favorable for him. In referring to the testimony of the witnesses Wimmer, Schwebel and Dr. Hirschfeld and General von Kleffel, I should like to state the following briefly: It should be known to the Tribunal that 40% of the total land level in the Netherlands lies below sea level. In the course of hard work for centuries, soil was wrested from the sea again and again and changed into fertile farming land. Powerful dikes protect the land; locks and pumping installations regulate the entry of water and water traffic in the interior of the country. The constant struggle against storms and water have turned the Dutchman into a proud and freedom-loving character. "God has created the earth; we have made our land ourselves," says a Dutch proverb.

When the Canadian troops thrust forward toward the North, the Reich Commissioner, contrary to the expectations of many persons, did not take the way into the Reich from Groningen, but returned to The Hague in order to carry his responsibility until the end. He feared that the collapsing Reich might reach a policy of catastrophe which would lead to destruction in an exposed country like Holland where 271 people live in one square kilometer.

The Gothic battle, in which everything is exterminated, became a fixed idea in many heads. Goebbels, after all, has declared braggingly that if they must go, they would slam the door with such a bang that the whole world would hear it. The Reich Commissioner warned against such ideas. The "Scorched earth" order actually came, and it would have meant the destruction of all technical facilities, including dams and lock facilities in Holland and of two-thirds of the country. In unison with Minister Speer and Doenitz all this was prevented.

This has also been confirmed in my questionnaire by Commander-in-Chief

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General van Kleffel and been acknowledged by the Chief of Staff of the American Army, Bedell Smith.

Historical structures were also to be destroyed, as has been testified by Schwebel. The defense counsel of General Christiansen informed me that besides the technical troops of the Wehrmacht which carried out detonations and floodings justified by the war situation, men sent by Himmler also appeared in order to carry out destructions behind the back of the Wehrmacht. All this was prevented by the intervention of theReich Commissioner, who has conscious of his responsibility, and the country was saved to a great extent from destruction which could never again have been repaired.

Since May, 1932 there has been a simple memorial on the dam of the Zuidersee, the largest water structure which has ever been constructed, which bears no name whatsoever, only the proverb: "A nation that lives builds on its future." Regardless of how the Trials may end, perhaps some day the tim

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will come when the brief words will be added under this proverb: "Saved from destruction by Seyss-Inquart."

And so I have reached the conclusion of the second accusation complex.

Slowly the curtains are beginning to fall on the act of the supposed conspiracy. I ask you, however: Is a man who, in the middle of a struggle for life and death of his nation isplaced at the head of the administration of an enemy country and has tried again and again to prevent or decrease attempted excesses, a creature who could accordingly be described as a ruthless and arbitrary despot and war criminal?

However, I would not want to bring my discourse to a conclusion without expressing some general thoughts on the trials. I esteem France and her old culture, and I have considered it an honor to be allowed as an attorney to cross swords with Frenchmen in these proceedin s. I have listened to a speech of the French Chief Prosecutor Francois de Menthon with deep attention and inner sympathy. However, it cannot remain undisputed. De Menthon has described Germany as the eternal enemy of France and alone demanded the most severe penalty, death, against all defendants without exception. He thereby places one of the weaknesses of these trials into the foreground, namely, that it will always remain the trial of the victors over the vanquished. One is reminded too strongly of the Gaul Brennus, who, which is vae victus throws the sword onto the uneven scale. Menthon with this presentation unintentionally obstructs the road to a lasting peace.

The sin against the spirit is the basic error of National Socialism and the source of all crimes, says Menthon; National Socialism is based on racial theory, a product of German mentality. But Menthon rightly explains that National Socialism is the farthest point of a doctrinaire development. There are no direct transitions in History but all is rooted inpreceding ideas and undercurrents. The events of the 20th Century can only find their explanation in the explanation in the developments of the preceding century. The final periods of the 19th century are under the influence of exaggerated Nationalism, and in connection therewith it is important to confirm that it was not Germans, but French who first established the racial theory.

Count Gobineau in his essay sur L'inegalité des races humaines (Essay

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concerning the inequality of the Human Races)" and George Sorel in his "Reflexion sur la violence (Reflections on Violence."

M. Menthon cites at the end of his statement "La morale internationale" (International Ethics) the work by Politis which I have also mentioned. Politis describes this exaggerated Nationalism being a real international disease, deriving from the 19th century. He in particular mentions the case of the Frenchman Maurice Barres. He sees in the sentence: "Que la patrie et elle tort, il faut lui donner raison!" (my country right or wrong), the negation of all ethical laws.

I wish to refer to another Frenchman in contrast with M. Menthon; he is an unknown professor of history. The Gestapo, the German, and the French police are pursuing him; he frequently changes appearance and name. He is everywhere, we find him in the Massive Centrale, in the Auvergne-District, in the mountains near Grenoble, on the coast at Bordeaux, and in Paris. Wherever he appears ammy trains are derailed, ammunition depots are blown up, and vitally important industrial plants are shut down. He always remembers the words of De Gaulle: "Our country is in mortal danger, join us, everybody; fight for France!" The name of this man is Georges Bidault. The first thing he did after the enemy had been driven out of the country was to visit severely wounded soldiers in the hospitals. But he does not only go to the French, he also visits the German casualties in their wards, saysing to them: "Comrades, I wish you speedy recovery and a happy return to your homes." These words of the man who today is leading France indicate to us the path towards peace in honest and free collaboration of people and nations.

Hitler wished to create a new Europe; through his own methods, he failed in his efforts. Germany is beaten down to defenslessness, her towns are destroyed, her economic life annihilated. France, one of the oldest countries of Christendom, the country which at the end of the 18th century revealed the rights of men, has therefore today the particular mission and responsibilit of saving the culture of the Occident.

For this achievement, however, it is necessary that distrust, poisoning the life of all countries, must be eliminated. All this in short and common to the trial.

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Into your hands, my very esteemed judges, I trustfully put the fate of my client. I very well know that you will consider all the facts which speak for Seyss-Inquart.

But once more I wish to walk through the streets of Nuernberg, as I have done so often during the long months of this Trial, and from the imperial castle, now destroyed, look down on the German countryside. Out of the ruins of the old town rise, hardly damaged, the monuments of the Painter Albrecht Duerer and the Geographer Martin Behaim. They are the prophets of German Art and Science. May those two names be symbols for the future, and, like a pillar of fire, lead theGermnn people from the dark misery to the luminous heights of a lasting peace.

THE PRESIDENT: The Tribunal will adjourn for a few minutes.

(A recess was taken).

H0185 - 0038

THE PRESIDENT: I call on Dr. Bergold for the defendant Bormann.

DR. BERGOLD: Your Lordship, Your Honors: In the case of the defendant Martin Bormann, with whose defense I have been commissioned by the Tribunal, is an unusual one. At the time when the National-Socialist Reich was still shining the defendant lived in the shadow, he kept on being a shadow at this trial and is, in all probability, today, too, among the shadows as the dead were called in ancient times. He is the only one of the defendants who is not present and against whom Article 12 of the Charter is applied. It seems as though history wanted to preserve the continuity of the genii loci and to see in the very town of Nuernberg a discussion of the problem of whether and in how far the greatest probability for a defendant's having lost his life will be an obstacle to a trial in absentia of such a man. For in Nuernberg an adage has come down from the Middle Ages to our times which says the Nuernberg people would not hang anybody lest he be apprehended first.

In other words, it was in Nuernberg in old times already where the question of whether a trial of an absentee can be carried out, was discussed in an excellent manner.

THE PRESIDENT: It appears to the Tribunal that you are now about to argue first of all that the Tribunal has no right to try the defendant Bormann in his absence, and secondly that if it has the right it is not advisable. Both these points were considered on the 17th of November, 1945, and were decided on the 22nd of November, 1945, after you had been appointed; and both were decided in favor of trying Bormann in his absence. That is to say that the Tribunal has the power under Article 12 of the Charter and that it was in the interests of justice in the circumstances to conduct a hearing in his absence.

DR. BERGOLD: Yes, that is true. I know of this decision. I should only like to ask whether the point of view was given in the course of the procedure that the Tribunal might change this decision. I assume that this decision can be revised by the Tribunal itself. I am making this statement in order to show that the

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trial here has brought out the points of view which --

THE PRESIDENT: Dr. Bergold, surely this is an inappropriate moment at which to advance this argument when we have already conducted the trial of Bormann. We have given you over a long period the opportunity to make application for a reconsideration of this decision.

Are you not hearing what I say?

DR. BERGOLD: I did not understand the last sentence entirely.

THE PRESIDENT: I said that to make such an application now is far too late. You have had all those months since November in which you could have made such application for a reconsideration of the decision of the Tribunal. But instead of making it, you proceeded with the defense of the defendant Bormann.

Possibly you have your disk wrongly set. Would you look at the disk and see whether it is all right?

DR. BERGOLD: The translation is poor. I can hear, but the translation of your statement into German is not clear enough.

THE PRESIDENT: I shall speak very slowly. What I said was that if you wished the Tribunal to reconsider the decision of the 22nd of November, 1945, you should have made application earlier. Instead of that, you went on to appear as the representative of Bormann, and the Tribunal decided to hear the case against Bormann. Therefore, they are not prepared to listen to this argument for the reconsideration of their decision now.

If you think it in the interests of your client, the Tribunal has no objection to this document's being filed, or to the filing of these pages of your speech. But the Tribunal does not propose to reconsider its decision.

DR. BERGOLD: Mr. President, one piece of evidence that turned up only at the end of my case, the testimony of the witness Kempka, in my opinion, made the probability of the death of Bormann so evident that only from this point of view can the question of a reconsideration be brought up. It was when the witness Kempka was questioned at the end of his testimony, and I assumed --

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THE PRESIDENT: All I was saying was that from Page 1 to Page 10 the Tribunal will not hear that read. The question of whether Bormann is dead or not is a question with which you deal later in your argument, and the Tribunal will hear you upon that. But from Page 1 to Page 10, the argument does not deal with the death of the defendant.

If you will begin at Page 10, with the words, "I cannot" -- it is the last paragraph on Page 10 -- the Tribunal will hear you.

DR. BERGOLD: I shall submit to the decision of the Tribunal.

Gentlemen of the High Tribunal:

I cannot and will not criticize the Charter. I wish merely to establish the fact that the Charter has created an unheard of novelty in the legal history of all times and countries, the High Tribunal should carefully consider whether at the present stage of the proceedings it will enforce the right, granted by Article 12 of the Charter, to prosecute in absentia. Since a revision of the sentence is no longer possible, the proceedings in my opinion should be carried out only

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if by a corresponding application of the fine and clear principles of Russian law it is first proved that the defendant Martin Bormann is wilfully evading the court and secondly that the circumstances are not in any respect subject to the slightest doubt. As the Charter does not stipulate more clearly when and under what conditions the Tribunal is to enforce its right, the latter must make a law for itself.

Owing to the incontestable nature of the sentence, the Tribunal's responsibility in this particular case is a heavy one. My opinion that the sentence is final, is also shared by the high Tribunal, as in the last phrase of the public charge against the defendant Bormann it is stated explicitly, that should the defendant be found guilty, the sentence will be applied without any further procedure as soon as he is apprehended.

But in my opinion it has not been proved at all that the defendant is wilfully keeping away from justice. I think that as revealed by the examinatio of the witness Kempka it is even highly probable that the defendant Bormann is already dead. Witness Kempka has stated that, on the night of 1st to 2nd of May 1945, together with State Secretary Naumann as first, the defendant Bormann as second, the Standartenfuehrer Dr. Stumpfecker as third, and himself as the fourth in that order, he had tried to flee through the Russian lines by keeping close to theleft hand side of an advancing tank. Bormann was walking close to the middle of the tank, so the witness had the impression that Bormann's hand was holding on to the tank. That action seemed to the witness necessary in order to keep pace with the rolling tak. That tank, having passed anti-tank obstacles and having advanced some 30-40 meters beyond was blown up into the air, presumably by a direct hit of an anti-tank grenade.

The witness observed without any possible doubt that in the immediate vicinity of the tank just where Bormann walked, a darting flame burst forth from the exploding tank, knocking down Bormann and State Secretary Naumann walking immediately ahead of him. Thus Bormann found himself in the centre of the explosion which was so violent that the witness is convinced that Bormann must have died under such circumstances without a doubt. It cannot be maintained that owing to the fact that the witness had escaped the violence of the explosion Bormann also must have been saved. It should be noted that

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Kempka was running behind the tank on the left hand side and thus was at a distance of some 4 meters from the explosion proper. Furthermore, he had additional protection in the person of Dr. Stumpfecker, running in front of him, whose body was thrown against him by the explosion, serving as cover. Kempka has testified that Bormann was wearing the uniform and the rank insignia of an SS-Obergruppenfuehrer at that time.

Even if Bormann had not been killed on this occasion he would certainly have been wounded so seriously that it would have been impossible for him to escape. Unquestionably he would have fallen into the hands of the USSR troops who, according to the affidavit of the witnessKrueger, had already been quite close to the Reich Chancellery and had occupied it already on 2 May 1945 owing to the fact that the defenders had fled. With the loyalty the USSR is showing in these proceedings, she would have transferred Bormann to the High Tribunal for trial.

There being only two possibilities -- at least in my opinion -- the first of which, namely that the wounded Bormann fell into the hands of the USSR, has been proved not to be true; then only the second possibility can have happened, namely that Bormann lost his life. I am therefore of the opinion that I have proved with sufficient likelihood that Bormann is dead.

In my opinion one should not be allowed to say that until death is established with absolute certainty a man is to be supposed alive. This is a supposition which I, the defense counsel, would have to refute. A legal assumption of aperson being alive has existed in all countries of the world but only in the field of private law, and only for the purpose of regulating conditions pertaining to inheritance or matrimonial property laws. However, a legal assumption of a person being alive has only very seldom been stipulated, e.g. in Common Law and in the Prussian Law and even there it is contested.

The Civil Code knows of no assumption of a person being alive but instead only admits the declaration that a person is missing in the eyes of the law. Common Law neither provides a declaration as to the death of a person nor a special one as to a person being alive. Russian law permits already after a short period of time a declaration as to a person being missing in the eyes of the law, and this may be followed by the declaration of the person's death. But even in these stipulations no assumption can be found as to the person being alive.

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Whatever is the case in the field of civil law, it is nevertheless a fact that in the field of criminal law there exists no assumption as to a person being alive in any country. If, however, criminal law does not recognize such an assumption as to a person being alive, it is not my duty either to refute such an assumption as to a person being alive. It must be enough when such circumstances are proved by the defense as lead one through a reasonable evaluation of the usual course of life -- as I have already shown -- to conclude that a defendant is dead.

I am, therefore, of the opinion first of all, that the death of the defendant Bormann was proved with sufficient probability; in fact with such great probability that the proceedings would accordingly have to be suspended entirely and forever since the charter does not recognize a trial of dead persons. If there were such a thing as the trial of a culprit after his death the prosecution, according to all logic and reason, would have had to indict the real heads of National-Socialism.

But apart from all this, it is not at all proved in my opinion that the defendant Bormann is intentionally evading the trial as long as the possibility exists that the defendant is dead. It is correct that the Charter does not recognize such an assumption for the procedure against a defendant who cannot be found. However, the Charter is rather tacitunr on this subject and I have already stated that I am convinced that the High Tribunal should examine very carefully whether it should exercise its right in this special case of the defendant Bormann. Considering the finality of the verdict it seems to me fair and just in the case of Bormann to consider at least the general legal principle of all civilized countries by which a defendant must be guaranteed a hearing even if only after his arrest. Thus by suspending the proceedings one would avoid creating accomplished facts as long as it is still possible that Bormann's absence can be excused.

May I point out in this respect that paragraph 12 of the Charter, second section, expressly refers the Tribunal to the interests of justice which it should consider in examining the question of whether it intends to try in absentia cases other than where the defendant cannot be found. These interests of justice are not unilateral and are not directed against the defendant exclusively. True justice is always universal. In all laws of the world it

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demands that as far as possible in the eyes of justice the interests of the defendant shall be protected as well.

In the case of the defendant Krupp's illness, the Tribunal already exercised its right not to try a person in absentia. Even if this case cannot quite be compared with that of the defendant Bormann the decision should be considered in the present instance, too.

Just because of the peculiar character of the case and in view of the testimony of the witness Kemka, one can by no means consider the fact as proved that the defendant Bormann deliberately stays away from the Tribunal, because however the matter is viewed, one cannot ignore the possibility that -- even if he had been saved and had not fallen into the hands of the Allies -- he may have been injured permanently and to such a degree that neither physically nor mentally he is in a position to surrender to the Tribunal. It is for this very reason that after thorough consideration I believe that in the interests of true justice the Tribunal should suspend proceedings against the defendant Bormann.

Such a decision, however, is also justified according to the second principle which was formulated by the Russian law, namely that proceedings shall as a rule be permitted only if the circumstances of the case are no longer subject to any doubts.

The defendant Bormann is absent. He has not even been able to defend himself against the charges made against him. He has not been able to give me any information and I have not been able to find any witnesses who would have sufficient knowledge of the matter and who would be able to disclose to me any exonerating evidence concerning the accusations made.

Now as ever in the course of these long proceedings, Bormann's person and activity remained in that obscurity in which owing to his character the defendant already kept himself during his lifetime. The charges which many co-defendants have made against him, perhaps for very special reasons, and obviously in order to further their own defense and exonerate themselves, cannot for reasons of fairness, be taken as the basis of a judicial decision. The prosecution has already stated quite frequently through its representatives that the defendants would endeavour to throw the main blame upon dead or absent men for the acts which are subject to the Tribunal's jurisdiction. Some of my colleagues have followed these tactics of the defendants in their defense

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speeches. Perhaps it was right to do all this. I cannot judge the matter. Besides, I have no authority to form such a judgment.

But nobody knows what the defendant Bormann could have answered these men if he had been present. Perhaps he would have been able to show that his entire activity was not the case for the happenings which the indictment deals with; furthermore, that he did not have the influence which is imputed to him as the secretary of the Fuehrer and the Party.

It is known all over the world, that to secretaries and chiefs of central chancelleries, just like to the princely valets in the times of absolutism, has always been ascribed considerable influence upon their superiors, as it is in the nature of things that through the hands of such secretary must pass everything which can only be handled officially. But what in a modern State can evad the Moloch of bureaucracy?

The Document Book and the Trial Brief presented by the prosecution, do in no case contain a definite indication that in the incriminating events and measures Bormann personally had effective and outstanding influence on the actio and measures of the third Reich, of the NSDAP, and even of Hitler himself and of how strong that influence had become.

In the comments to the decree of Bormann, printed in Volume II of the official compilation "Instructions, Directives and Announcements of the Party Chancellery", page 228, presented as Bormann Exhibit No. 11 in my book of documents, it is stated that the party chancellory was an agency of Hitler, which he used to direct the party. Expressly emphasized is the fact that since 12 May 1941 Hitler had again taken over the full and exclusive direction of the party. The head of the party chancellory, at that time Bormann, had been charged to inform Hitler continually about the work situation at that time in the party, and to let him know of all circumstances which were important for the taking of decisions in party affairs. This had to be done according to Hitler's fundamental directives, and the determination of the latter, especially as regards their political aspect, the supreme chiefof the party had reserved for himself.

Thus it is shown that the party chancellory was the central chancellory f matters concerning the home policy of the Reich leadership, and through this channel were sent up to Hitler all suggestions and information coming from below, whilst directives coming from Hitler were passed down byit to the lower levels.

THE PRESIDENT: The Tribunal will adjourn.

(A recess was taken until 1400 hours)

AFTERNOON SESSION

(The hearing reconvened at 1400 hours, 22 July 1946)

DR. BERGOLD: May it please the Tribunal, I shall continue on page 19 in the center of the page.

It is right to say that a man in such a position, as I have told you this morning, can have a great influence if there is a man who can be easily influenced at the top, but it is equally correct to say that a man in such a chancellory can play a purely formal rule as the head of a liaison agency if at the top there is a dictatorial autocrat who cannot be influenced, and if the chief of the chancellery has no special ambition nor any special abilities.

The proceedings which have been held for many months under this roof have shown which of the two alternatives is more likely. It is obvious that seen from lower levels the head of the chancellery would appear influential even in the case of the second alternative because everything went through his hands, and because any blame for subordinates passed through his agency, and because all mistakes, which arose in the country with the other officials were reported there. These officials and subordinates, however high a rank they may have held, and even though in part they may have feared the chief of the party chancellery, -perhaps indeed only for reasons due to their personality or mistakes,- these are not the right people to enlighten us as to which of the two alternatives described is the proper one. As long as does not appear and is not heard personally, the true part he played remains obscure. Nobody, even the High Tribunal, could ever pass a reliable sentence The whole case remains dubious. It remains dubious even in the individual points. I would like to demonstrate this by just a few examples.

My esteemed colleague of the defense, Dr. Thoma, has stated that Bormann prevented the defendant Rosenberg from following his policy. For this he referred to the memorandum of Mr. Markulls, submitted as R-36. But this document is nothing other than a comment on an unknown unproduced Bormann document.

Markulis declares expressis verbis, that he translated Bormann's formulations into the language of a simple member of the German civil service, and presented them more pointedly.

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So, only Bormann could enlighten us in this case, and tell us whether he wished his writing to be understood in this way, or whether Markulls twisted the meaning and sense of Bormann's writing, so that only Bormann could disclose whether this writing, like almost all the Bormann documents submitted, did not simply transmit the utterance of a Reich leader or of Hitler. So this case, too, seems altogether doubtful. An explanation can hardly be expected. Furthermore, it must be pointed out that almost all the documemts which the rposecution has gathered together in its document-book are in general mere reproductions and publications of a Hitler decree or a Hitler instruction. Bormann transmitted these instructions to the subordinate agencies with an accompanying letter, in order to inform the agencies concerned. This is an activity which like office work has to be done even in the most terrible tyrany and in they most reprehensible despotism, -how much more so in a modern state structure like the National Socialist Reich. Some man has to forward all the instructions and orders to the subordinate agencies; that is a purely formal activity. It could be done as well by a plain office boy as by a brilliant Reich-Leader.

From the transmission of such instructions, according to office routine -I mention for example the documents 069PS, 1950 PS, 656-PS, 058-PS and even the famous document 057-PS, can only be considered as a transmission of a Hitler directive and opinion-, from such a method of transmission nobody can draw the conclusion that the forwarding party had an influence on the decrees, orders and decisions. It is possible, but its certainty has not been proved,.

But before a sentence is passed, this question of influence should be entirely clarified. Because if in the transmission of an order, according to chancellery routine, one could see any offense whereby one would even come to condemn the women who wrote such orders on the typewriter, the verdict of justice must judge different, the importance and severity of the punishment for such clerical work on orders, from that which should fall upon a man whose collaboration was a decisive factor in causing such orders and decisions, and who, by his influence and advice, led the chief of the state to deliver them. All this is not clear in Bormann's case, and remains dubious. The empty word of the co-defendants, whose motives can never be entirely unveiled, saying that Bormann exercised great, even diabolic influence is no proof.

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The other documents of the prosecution only prove, that Bormann, according to the decree of 29 May 1941, 2099-PS and to the decree of 24 January 1942 2100-PS, arranged for an exchange of correspondence between the individual Reichsliefers and forwarded their desires and suggestions. As an example I mention documents 056-PS, 072-PS, 061-PS, 205-PS and 656-PS. Nobody can derive with certainty from these activities as a go-between, which were necessary from the standpoint of administrative work, the extent and true nature of Bormann's influence.

Further documents show that Bormann very often served as a mere stenographer, and took the necessary notes during Hitler's discussions with some of the defendants. This is proved by document L-221 concerning the annexation of the "Eastern Territories" and the Russian document USSR-172. But in any case such documents do not make clear whether and how he influenced during such meetings in such sessions the policy and the measures of the Third Reich. According to all rules, a stenographer has no influence at all. He only fulfills an automatic activity.

I would not like to be misunderstood in this. Far be it from me to dispute the fact that Bormann occupied quite an important position in the leadership of the Third Reich. But no clear view has emerged during this trial as to the real weight Bormann could throw into the scales or to what extent his importance was increased and inflated by the bad conscience of third parties, and finally of what his influence actually consisted. Statements of the other defendants, which were made for their own defense, do not constitute relevant evidence. At any rate, the document book of the prosecution contains almost exclusively documents like those I have just examined closely. Accurately speaking, Bormann only did what was legal in Germany. This is revealed in the documents I submitted, e.g. Bormann-Exhibit Nos. 2,3,5,7, in which he repeatedly pointed out to party offices, that any illegal action against Jews was not permitted.

It is characteristic for Bormann's case that not even measures against Jews could be proved against him. He never did more than forward such instructions and bring them to the notice or publish them, as it was prescribed by the law and as it followed from his clerical position as party secretary. Even the great conference of 12 November 1938, which was held under the chairmanship of Mr. Goering and from which emanated a series of law against the Jews, is only connected with Bormanns' personality insofar as Bormann forwarded to Mr. Goering Hitler's instruction ordering that such a conference be held. In any case it has not been made clear at all what influence Bormann himself had on these questions. But how can a just Tribunal determine the extent of an appropriate punishment. for the part played, if the participation

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of the individual defendant in the fense is not clearly established? Nobody can say that there is no doubt about the circumstances of the case.

With respect to the first idea, it seems to be most certainly proved by the Document Book of the prosecution that Bormann was one of the most zealous in the fight against Christian churches. Most of the documents quoted in the Trial Brief referred to this point. It is certainly correct to say that Bormann was philosophically and according to his attitude a violent opponent of the Christian doctrine. But, such a spiritual attitude in inself is neither an offense nor even a crime before the whole of mankind, which embraces so many different conceptions of the world and the higher connotations and will perhaps give birth to many more.

In modern times there are countless convinced atheists. In other countries of the globe, too, there are officially recognized organizations which oppose the Christian interpretation of the world, and at the turn of our century there were big associations in many countries which had pure materialism as their philosophical system and the negation of spiritual things openly inscribed on their banner. No one can be punished for wishing to teach others the precepts of his idealogy or for wanting to convert them to his point of view. The modern world still recalls the horrors of the Inquisition. Therefore, Bormann could only be punished if it were proved that he participated in a real religious persecution and not merely in an ideological struggle.

In my opinion the two most important pieces of documentary evidence which the prosecution has produced against Bormann, namely documents L-75 and 089-PS, do not show that the defendant Martin Bormann in his official position undertook anything against the churches as religious institutions. The quintessence of document L-75 is contained in the sentence which says that from the incompatibility between National-Socialist and Christian ideology it must be deduced that any strengthening of existing Christian confessions and any furtherance of new ones arising is to be rejected by the party. It is of no importance for what urgent reasons Bormann came to write such a sentence at the end of his letter. One need not discuss the fact that failure to strengthen a religious conception which one opposed on philosophical grounds

does not constitute religious persecution. Nobody is obliged to support a religious conception. It is not permissible to direct one's attention only to excited arguments, stating that a religion should not be strengthened, and to disregard the conclusions from such considerations.

It is furthermore important in this connection that we received only one copy of this document, a copy which a Protestant minister by the name of Eichholz made out for himself. Whether the reproduction of the contents of Bormann's statement in this document is fully correct has not at all been proved. In any case the document in this form does not represent true evidence.

In document 089-PS, which may be recognized as being authentic, Bormann takes indeed a very definite stand against the church. It finishes, however- and this is the only fact which should be considered for the verdict -- by saying that no National-Socialist teacher be reproached for teaching Christian religion and in such a case the original text of the Bible should be used; any new interpretation, comment or taking apart of the text of the Bible is to be avoided. Therefore, Bormann, despite his previous philosophical attack against the church, takes here the legal standpoint that the Christian dogma may be freely propagated. Could a more loyal action ever be expected of sucha strong opponent of a doctrine?

The remaining documentary evidence does not reveal any real persecution measures either. The fact that Bormann on Hitler's order prohibited the admission of priests or of members of certain religious association to the party and that on Hitler's order he forbade priests to be appointed to leading positions in the party in order to prevent dissensions is no religious persecution. The fact that during the war he demanded that the church make the same sacrifices as the other institutions of the State does not represent a criminal measure for religious reasons. That within the closing of many lay institutions which was to take place in order to make a better use of human reserves of the nation he strove for the closing of church institutions, too; that within the limitation of the number of copies and number of pages of lay publications he wished that church publications be limited also does not come under the provisions of Article 6 of the Charter.

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It is true that he let himself be guided in this respect among other things also by his anti-clerical attitude. But when otherwise the same measures were taken in Germany against other institutions and other publications, too, measures which as war measures were supposed to be only temporary, one cannot speak of an actual religious persecution. Not even Bormann's participation in orginating the persecution of priests has been submitted or proved at all. It results from all documents that Bormann always adhered to the effective legal stipulations so that he, who was so eagerly intent on complying with Hitler's orders, certainly observed strictly Hitler's decree which directed at the beginning of the war that all measures against the church be discontinued.

Therefore, it may be said in conclusion that this matter, too, cannot be really cleared up despite the numerous documents presented. Documents alone do not suffice to dissipate all doubts on the case. Especially with respect to the importance and weight of Bormann's share in persecution measures against the church it seems necessary to determine Bormann's personal responsibility. Thus, this fact also remains somewhat obscure. A basis for a just determination of the amount of punishment cannot be established.

I shall not take up the time of the High Tribunal by exhibiting further details. I think that the indications I have given are sufficient to show that even the documents presented by the prosecution prove, in any case, only one thing with certainty, namely, that Bormann, in his capacity as chief of the Party Chancellery, held "as ordered by the law" an intermediary position in the clerical, secretarial dealings between the head of the Reich and the subordinate agencies and in the dealings among these subordinate agencies. Anything else is only an assumption which has not been definitely proved, in any case not with that certainty which must seem essential for the sake of justice in order to pass a verdict in absentia and without hearing the defendant, especially with respect to the severity of the punishment. Unfortunately, a legend has been woven around Bormann's personality, his activity and his survival. But for the sober judgment of jurists, legends are not a valid basis for a sure verdict free from any doubt.

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In view of the innovation created by the Charter in the history of law of all times and all nations in passing a final, irreversible sentence upon an absent defendant, I beg the High Tribunal to make use of its right to carry through such a procedure only after having considered the hitherto existing legal conceptions and especially when examining the case to consider the prerequisites set down in a particularly precise manner by the Russian law. I, therefore, expressly propose that the Tribunal decide to suspend the proceedings against the defendant Bormann until he is personally heard and can personally state his case, and that the Tribunal make no use of its right according to article 12.

THE PRESIDENT: I call on Dr. Kubuschok on behalf of the defendant von Papen.

DR. KUBUSCHOK: Before beginning my final plea, I should like to submit to the Tribunal a few interrogatories which have since been received and which have also been translated. Since I am referring to them in my final plea I would consider this a suitable moment for their submission.

THE PRESIDENT: Yes, Dr. Kubuschok.

DR. KUBUSCHOK: First of all I am submitting the interrogatory which has been received from witness Tschirschky as Document No. 103. I shall submit the copies for the judges immediately, four English and two French copies.

On this occasion may I draw the attention of theTribunal to the fact that Tschirschky is the secretary of the defendant von Papen, who, at the time when he was in Vienna, had been called by the Gestapo in Berlin, and then emigrated to Great Britain, where he has presumably obtained British citizenship. With reference to the very numerous questions dealing with Papen's vice-chancellorship and his activities in Vienna, the witness has expressed himself in great detail and in many cases answered in the affirmatice.

Presumably, the Tribunal does not want me to discuss these questions in detail now. The copies submitted to the Tribunal will be sufficient. But perhaps I could quote the last paragraph from Question 1: "Regarding his relation to the NSDAP, I can say that during the time when I was working with von Papen, von Papen's attitude was negative and, in fact,a hostile one in every respect."

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It appears to be of importance to me to refer to the answer to Question 3, which deals with the safety measures adopted during the formation of the government on the 30th of January.

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THE PRESIDENT: Dr. Kubuschok, the Tribunal does not wish to comment twice on the interrogatory. If you want to comment upon it to the Court in your speech, well and good. You comment now, as you put it in, and then presumably you may make some observation later on in your speech.

DR. KUBISCHOK: Mr. President, during the plea I will refer very briefly to this document. The special questions which are answered are not referred to in my plea. I will merely refer to my resume. I am not dealing with the questior and answers individually.

THE PRESIDENT: Doctor Kubuschok, the Tribunal thinks the appropriate course for you to take is to put in these interrogatories now, and when you deal on them in your speech, you can refer to any particular passage that you want

DR. KUBUSCHOK: Yes. In its present written form, it is very brief. It is not even a sentence. It is an aside.

THE PRESIDENT: When you get to it --

DR. KUBUSCHOK: Then you want me to deal on it?

THE PRESIDENT: Yes.

DR. KUBUSCHOK: Very well. But on the other hand now, I have submitted to the interrogatory as Document 103. Then the completed interrogatory of Archbishop Groeber as Document 104. Groeber is connected with the Concordat. I am also submitting interrogatory of Archbishop Roncalli under Document Number 105. And finally, the interrogatory from the Polish Ambassador Jan Gawrouski which is Document 106. These are documents the translations of which I have not yet received. I wouldlike to have the Tribunal permit me to enter any document, which, in spite of my pleadings, I have not been able to have translated. I have an affidavit from a foreign journalist, Rademacher von Unna. He had written a letter to my colleague, Doctor Dix, on the 29th of May, which arrived here about three weeks ago. What is of interest is mostly one paragraph. I should be most grateful to the Tribunal if I could read the paragraph over and so the Tribunal would be in a position to see if it is relevant, and if so, to permit me to submit the document. Then I would submit the original and the translation could be supplied as soon as completed.

THE PRESIDENT: You have not shown it to the Prosecution, yet, have you?

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DR. KUBUSCHOK: I had submitted the German text at the time but now it has been in the translating department for two weeks and I have not been able to get it today. I had already mentioned the document during the last session where we discussed evidence, and the Tribunal informed me that I should submit it on another occasion, when the matter came up for discussion.

THE PRESIDENT: Is it long?

DR. KUBUSCHOK: It is not long, it is a page and a half, and I really want to read the paragraph which is shorter than half a page. Only that paragraph is of real importance to me.

THE PRESIDENT: Does the Prosecution object to this?

MR. ELWYN JONES: I have not seen a copy of this document, but we have no objection in principal. I have not seen the document myself and it is a little difficult to give any opinion as to whether we would object, if we had the opportunity of examining it.

THE PRESIDENT: Dr. Kubuschok, perhaps the best would be for you to read the document and the prosecution can move to strike it out of the record if they object to it.

MR. ELWYN JONES: That would be quite a convenient course for the prosecution, my Lord.

DR. KUBUSCHOK: Well then, I shall read from that affidavit from Rademacher dated the 29th of May 1946, which was executed in Milan, half of the penultimate and the last paragraph. The executor of the affidavit in this communication is referring to a statement made by Von Papen which is worded as follows: "He, Papen, would however, not be deterred from his views by anybody and carried out his mission in the way that he himself understood it. Merely to be an intermediary and peacemaker, and therefore he would throw anyone out of the door who would misuse him in Austria for obscure purposes. In this connection it is worth mentioning that a member of the Austrian Government, a Secretary of State, the name of whom I have forgotten, was making efforts to establish personal, but secret, contact with the special German Ambassador, in order to offer him his services for the German cause. Herr von Papen turned down this offer giving as his reason that he was refusing to participate in the conspiracies which were directed against the official policies of the Ballhaus Platz. He had attempted to cooperate openly and loyally with the Federal Government, and, he, on his part, would not use any other means

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as far as he himself was concerned." As an explanation, I should like to add that the member of the Austrian Government who is mentioned in this is Neustadter Stuermer.

Your Lordship, Gentlemen of the Court:

Papen is accused of taking part in a conspiracy to commit a crime against peace. With respect to time the prosecution limits the discussions of the facts of the case to the termination of his activity in Vienna. It admits that for the subsequent period, especially during his activity as ambassador in Ankara, no indications were found to support the accusation. In other words, according to this viewpoint Papen is said to have taken part in the preparatory actions for unleashing a war of aggression - which actions as regards time, -the prosecution has placed very far ahead, but he is not said to have actively participated in the immediate preparations and in the crimes against thepeace itself.

The prosecution deals with Papen's activity as Reich Chancellor in the last pro-Nazi cabinet, with thepart he played as vice-chancellor in Hitler's cabinet until 30 June 1934, and with his activity as Minister Extraordinary in Vienna. It was faced with the task of proving that during this period preparatory actions for a crime against peace actually took place and that Papen in full recognition of these aims collaborated in the preparations. Since the counts of the indictment deal with a field of activity which is in itself a legal one and since the criminal element cannot be introduced into the individual acts except in the direction of their aims, judgment of the Papen case lies essentially in the subjective field. The prosecution is faced with the fact that Papen's own sentiments which often came to light and the policy which he actually pursued cannot be made to agree with the interpretation given by them. Therefore, they seize upon the premise that he is a double-faced opportunist who has sacrificed his real sentiments or those displayed, to the existing conditions of the day and Hitler's will. In consequence, it must be the task of the defense to bring about an elucidation of his personality in order to prove that Papen's actions and statements constitute a uniform, consistent line and that his entire attitude de facto was such as to forbid connecting him with the offenses of the Charter; and that those ofhis actions which are under discussion must have been undertaken in pursuit of other aims than those which the prosecution thinks it can recotnize. Furthermore, the defense will

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outline Papen's entire political activity in its legality and within the frame work of this activity it will deal with the actions considered punishable by the prosecution and will finally submit counter-evidence showing that he actively worked against a political development as represented by thefacts of the case brought forward in this Indictment.

We shall arrive here at a just evaluation only if the discussion is kept away from the question of political suitability and correctness and if we accept the politician as he reveals himself to us with the opinions which he developed from origin and tradition. Moreover, an essential element in judging fairly willbe the elimination of that knowledge we have now received at the trial from later years and concerning this later period.

We shall have to direct our considerations only to the time of the actions themselves, and only then shall we obtain a clear opinion of what Papen could see and expect at that time.

The prosecution places the beginning of Papen's participation in the conspiracy on the 1 June 1932, the date of his appointment as Reich Chancellor. However, it gives no answer to the question from what circumstances we are to see Papen's entry into the association of conspirators which is alleged to have been already in existence. It is impossible indeed to give an answer to this. Papen's activity as Reich Chancellor cannot either be regarded in the least as an activity in the sense of a Hitler conspiracy. The idea behind the formation of the cabinet, the entire leadership of the government during his chancellorship, and finally his departure from office are too clearly manifest, to allow us to read into them a promotion of Nazi ideas, a paving theway for National Socialism or even a participation in a conspiracy allegedly already on foot. The Papen cabinet was formed at the time of an unusual economic, political and parliamentary depression. Unusual means had already become necessary under the preceding cabinet. They were to be continued now in part on entirely new lines. In times of unusual crises

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a parliamentary legislative body probably always offers a certain difficulty. Therefore, even in the days of Bruening's cabinet the Reichstag was almost completely excluded from legislation and for all practical purposes was placed in the hands of the Reich President by means of the Emergency Powers Law. It was now thought necessary to work on new lines. A cabinet of men who were experts in their own field but who were not bound to any party, was to do away with these difficulties. Therefore, it was with this intention that the new cabinet was composed without the collaboration of parties. The tasks with whic the new government was faced and the program necessarily resulting from the conditions of the time brought with them of necessity an attitude which was hostile to National-Socialism. Any wish to strike at the roots of the depression must involve a fight on the part of government policy against the roots which would lead to the growth of National-Socialism. These lay in discontent over economic conditions and the political situation abroad.

But on the other hand one could only think of doing peaceful and reconstructive work of any benefit if some modus vivendi could be found with the National-Socialist Party. Not only according to constitutional law alone had the party the power practically to paralyze every government activity. With nothing more than the possibilities it had as regards propagandistic influence on the masses it offered the key to a possible pacification of inner-political conditions, the first prerequisite for the start of far reaching economic measures.

Papen was faced with this situation in the last days of May 1932, when without anything of his doing and to his surprise, he was commissioned by Hindenburg to form a presidential cabinet.

With regard to his governmental activity I wish to limit myself in my defense against the Indictment to the following details:

The formation of the cabinet of 1 June 1932 took place contrary to previous parliamentary custom without any preceding consultation with the National-Socialist Party. New pioneer economic laws with hitherto unknown financial commitments were decreed in order to fight unemployment and at the same time to eliminate the previous inexhaustible reservoir for the growth of the National-Socialist Party. The purpose of the new economic measures and the

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limited financial possibilities were the conditions for a great enlargement of the frame of these laws in time. The labormarket was to be stimulated by means which were to result from the future savings of public taxes if the measures were successful. The economic laws were based only on this exhausting of financial possibilities.

Intentionally no use was made of unproductive public work projects or a stimulation of the labor market by armament orders. These long range economi measures, which could be successful only in the case of an uninterrupted government policy, made the problem of their acceptance by the Reichstag especially urgent.

In the field of foreign politics, Papen continued the course which the Bruening cabinet had pursued, and in so doing he laid particular emphasis on these points of honor, the recognition of which would have brought no damage to the other parties to the treaty but which would have taken from the National-Socialist Party a forceful means of propaganda in influencing the masses.

At the Conference of Lausanne Papen openly explained the inner political situation. He pointed out that substantially ideological points were at stake the denial of which would give the National-Socialists the impetus they desired. He explicitly emphasized that his efforts were the last attempt of a middle-class cabinet and that in the event his policy failed only National-Socialism would profit from it.

Papen strove to make the National-Socialist Party take a share in the responsibility without wishing to entrust it with the key position of the office of Reich Chancellor, a share in the responsibility which would have brought a party of negative politics to a recognition of actual conditions and which would thus have eliminated the attractive demagogic propaganda.

These first attempts by Papen to bring about a participation of the National-Socialist movement in governmental work are already regarded by the Prosecution as paving the way for National-Socialism.

However, this is nothing actually but an attempt to find a basis of some kind of practical governmental work, an attempt which had to take into account the experience of the Bruening cabinet and the development of the National-

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Socialist Party.

The fact could not be disregarded that already the Reich presidential election in March 1932 had brought Hitler 36.8% of all the votes. If one tal into consideration the fact that Hindenburg was the candidate on the opposite side and that Hindenburg's personality certainly caused many followers of the NSDAP to cast their vote in this special case in a way which was not in accordance with party directives, the fact follows that a heretofore hardly known opposition party arose which numerically outweighed by far all the other parties, and which in its position as an opponent was able to paralyze a priori any governmental activity. Hence followed, what was a foregone conclusion for Papen, the endeavour to get this party out of its status as an opposition party. This decision would be all the easier if the firm conviction were there that a share in the responsibility of government would turn the opposition party from its radical course and especially curb it considerably in its further development.

The best evaluation of Papen's governmental activity, seen from the standpoint of the National-Socialists, comes from the fact that it was the National-Socialist Party which opposed Papen's decisive economic legislation and with its vote of no confidence -- pronounced jointly with the Communist Party -- brought about the end of the Papen cabinet.

The subsequent negotiations of the still acting Reich Chancellor, especially the events of the 1 and 2 December 1932 show again his unequivocal attitude toward the NSDAP.

Papen proposed a violation of the constitution to Hindenburg. He wished to exhause this last means in order to avoid a Hitler chancellorship. Schleicher prevented this solution on the grounds that in the event of a civil war which might then break out the government would not remain master of the situation with the existing police and military forces. In the fact of these clear historical events the attempt of the Prosecution must remain without success to read the opposite into the facts and into these clearly recognizable unequivocal motives.

What then are the points which the Prosecution believes that it can marshal in the face of this?

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One: that Papen, in his first negotiation with Hitler and a short time after forming his government, consented to rescind the order prohibiting the wearing of uniforms, a measure which, even if it had merely been taken as a political compensation deal to achieve acceptance of the cabinet, would be something very natural according to parliamentary rules. Not only was the NSDAP the strongest party in the Reichstag, but also and especially on accoun of its general political work in public life it constituted a powerful factor of the first order. Therefore, it could not a priori be driven into a state of opposition if it was intended at all to pursue a realistic policy of long duration and to overcome the emergency in earnest by revolutionizing the economic program.

The repeal of the prohibition concerning uniforms was based also on more deep lying reasons, because it was a one-sided prohibition against one party ; the opposing organizations were not limited in this respect and the acknowledgment of the law of equal treatment here could only eliminate dangerous propaganda material. The repeal of the prohibition concerning uniforms was furthermore by no means the announcement of a license for political acts of violence. The warning of the Reich President, announced with the proclamation of the decree, that acts of violence resulting from the decree would bring about an immediate prohibition of the organizations as such according to all intelligent estimation should have had the effect of preventing damaging results.

The claim of the Prosecution that the repeal of the prohibition concernir uniforms was the main cause of the increase in the number of National-Socialist seats at the July election, is completely at variance with the facts. In this connection I will refer to the already mentioned result of the Reich presidential election of March 1932 at which the real situation did not even become completely manifest owing to the fact that Hindenburg was the candidate on the other side. The election of 21 July 1932 brought 13,700,000 National-Socialist

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votes whereas in the Reich presidential election of 10 April 1932 Hitler had already received 13,400,000 votes. There are no grounds whatsoever for assumption that the appearance of uniforms which, incidentally, had been replaced earlier by camouflaged standardized clothing even during the period of prohibition, might have had a determining influence on the outcome of the elections.

Much more important and in a negative sense more decisive for the outcome of the elections was certainly the general prohibition of political parades proclaimed by the Papen cabinet at the beginning of the election campaign. Public meetings and political parades are the most important expedient for a party under demagogic leadership. To have this taken away before the electi was undoubtedly a much greater minus for the NSDAP than the previous plus it had received in the form of permission to wear uniforms.

In the letter of 13 November 1932 in which Papen again tries to induce Hitler to participate in the government, the prosecution sees an effort which i undignified in its form and blameworthy in its essence, to smooth the path of National-Socialism to power. It forgets that Papen conducted the November elections in sharp opposition to the NSDAP, because he tried to remove the party from the key position in whichwithout Hitler it was impossible numerically to form a majority from the Social-Democrats inclusive of them and extending to the farthest right. It forgets that this result had not been achieved, that they key position even with 196 seats remained with Hitler and that, therefore, it was necessary to make another attempt to win Hitler over for a presidential cabinet under some conservative chancellor. It overlooks in this point that Papen's proposals here again had the definite aim of excluding the NSDAP from the Reich Chancellorship. For National-Socialism a cabinet under a consdrvative politician, who according to the constitution would have had to determine the principles of the policy, would only have brought the party's influence on to this or that department, but in return for this influence it would have resulted also in its sharing the responsibility through its participation in the government. From the standpoint of the opposition to National-Socialism seen in retrospect one could indeed have welcomed nothing more than such a case in which the party's participation in the government was limited in influence and had a share in the responsibility. The end of opposition policy which was so tremendously

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favorable for propaganda would undoubtedly have brought about the end of the growth of the National-Socialist movement and the conversion of its radical elements.

The polite form of the letter was due to the official duty of the Reich Chancellor towards the leader of the strongest party in parliament. It is a foregone conclusion that in using this form and because of the purpose of the letter the writer does not refer to negative points but to those positive things which were suitable for use in any cooperation in the government.

In order to be able to construct from the period of Papen's Reich-chancellorship something that is at least a foothold in proving his union of ideas with National-Socialism the prosecution has imputed to the temporary elimination of the Prussian government by the decree of 20 July 1932 intentions which in no way could pass the test of an objective examination.

The "coup d'etat" of 20 July, as the prosecution terms the execution of the decree of 20 July, had not the slightest thing to do with promoting the National-Socialists. In the opinion of the Reich cabinet and according to the decisive judgment of Reich President von Hindenburg domestic policy showed the necessity for eliminating that toleration of Communist acts of terror which was practised by the Prussian cabinet in office and which continuously and openly came to light. From this state of affairs Hindenburg drew his conclusions and issued the emergency decree of 20 July. By a decision of the then still entirely independent Reich supreme court it was determined that this decree with regard to constitutional law was permissible within the framework of state political necessities.

If in carrying out this decree the request was indeed actually conveyed by police authorities to the minister of the interior who had been suspended, that he leave his offices, the word "coup d'etat" lends a meaning to this measure which goes far beyond what actually happened. Also in considering the effects of this measure an assumption that here the way was paved for National -Socialism isnot justified by any facts. The appointed Reich Commissioner Bracht belonged to the Center Party. The key position of police president in Berlin was entrusted to a man on whom the hitherto existing cabinet Braun had previously conferred the office of police president

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in Essen. Briefly, the result of the change was only that on the one hand an effective cooperation was now assured with the Reich authorities, and on the other hand new people filled some political positions which up to now had been the almost exclusive monopoly of the Socialist Democratic Party, to an extent which from the point of view of parity could no longer be justified. That in filling these positions the National Socialists were passed over, was a charge which was made against Papen time and again by the National Socialists.

Consequently, Papen's entire term of office in the government constitutes a clear line of realistic politics which show that on the one hand he did not let go the rudder in carrying out necessary and especially economic measures, but that on the other hand he tried to get a numerically almost overwhelming opposition party to collaborate. Papen's attitude towards the NSDAP became even more manifest after he had been asked by the Reich Presider late in November 1932 to collaborate in the efforts to form a new cabinet.

In this he showed he had the courage to take the most extreme consequences. Realizing that it was impossible to go on with a non-National-Socialist government according to parliamentary principles, he submitted to the Reich President the proposal to rule with the aid of armed force even if he thus caused a violation of the constitution and risked causing a civil war.

It is just as difficult to reconcile oneself with such a proposal, when one adheres to thinking along lines of constitution law as it is impossible to overlook in retrospect that the proposed violation of the constitution limited in time was probably the only possibility to avoid the solution which then became necessary on 30 January 1933.

Any other temporary solution could not have had a satisfactory result. Sooner or later the opposition party would have forced the resignation of any non-National-Socialist cabinet. Thus, the political unrest with its consequences on the entire economic life would have become a latent state. A state of affairs, which, by its alternate effect, was only suited to strengthen the national socialist movement and thus to bring it by force to a numerical strength which in the end would have resulted in the fulfilmen of its entire totalitarian claim for assuming unlimited power.

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The part played by Papen in the formation of the cabinet of 30 January 1933 might in itself be disregarded. It is sufficient to be aware of the fact, that all endeavors to bring about a parliamentary government without Hitler, were already impossible from a purely numerical standpoint, and that such a parliamentary solution with Hitler was wrecked by his opposition A measure born out of political and constitutional necessity cannot, according to the indictment, be considered as evidence of intended planning of a crime in the sense of the Charter. The significance of this count of the indictment must be considered. By maintaining all parliamentary rule a government is appointed by Hindenburg in his capacity of chief of state, the head of which is the leader of the strongest party. This government when presented before the parliament, finds an overwhelming majority. That which Papen is accused of, the knowledge of the activities of the National-Socialist party in the past, holds true to the same extent also for the other participants, Hindenburg and all consenting members of parliament. The reproach levelled against Papen thus includes also an accusation against Hindenburg and the entire consenting parliament. For this consideration alone, the unique attempt of including in an indictment a self-evident, constitutional procedure of a sovereign state, must probably fail.

If despite this fact I go into the events which occurred before the formation of the government, it is only in order to clearly show here, too, the unequivocal standpoint of Papen, who on one hand did not wish to close his eyes to the real facts, but on the other hand desired to undertake everything in order to prevent the danger of an uncontrollable development of this new formation. The prosecution considers the Hitler-Papen meeting at the home of Schroeder on 4 January as being the beginning of the efforts made for the formation of the Government of 30 January. As a matter of fact the meeting at Schroeder's was nothing else than an exchange of ideas about the situation of the moment during which Papen and Hitler maintained their previous opinions and Papen pointed out that Hindenburg, owing to

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the apprehensions which he expressed, would in no case agree to Hitler's taking the position of Reich Chancellor. Hitler would have to accept the position of Vice-Chancellor, since Hindenburg took the standpoint that the possibility for a further development would only follow after he had proven himself over a long period of time.

This meeting in Koeln took place upon Hitler's request. I refer in this instance to Schroeder's communique published by the press, which I submitted as document No.9 of the defense, and which I erroneously indicated during the cross examination as being a joint communique, issued by Papen and Schroeder. Schroeder establishes in it that he himself took the first step toward this meeting.

The fact that this meeting has in no way been the basis for the formation of the Government of 30 January is obvious from the fact that the discussion was immediately reported by Papen to Schleicher and Hindenburg and that during all the following time until 22 January Papen had nothing to do with the solution of the governmental problem. Schleicher as well as Hindenburg endeavored to obtain parliamentary support for the Schleicher cabinet through negotiations with the leaders of parties, efforts which failed, however, due to the weight of the political facts. The main effort was to split up the National-Socialist party by inviting the collaboration of the Strasser wing in the Government. These efforts failed when Hitler's position became so strong after the result of the elections in Lippe that he regained absolute control over the Party against all attempts to split it up. The outcome of the elections in Lippe of 15 January 1933 was generally considered as a barometer of public opinion with respect to the political situation. All parties had mobilized their entire organization and propaganda apparatus, and therefore one could draw a conclusion from the result of this election concerning the general public opinion. The result showed that the losses suffered during the November elections were almost completely made up. Thus everybody could recognize that the decline of the National-Socialist movement was stopped and that with the continuance of the momentary political and economic situation a further gain was to be expected

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The necessity for a decision became more and more urgent when on 20 January 1933 the Council of Seniors of the Reichstag - through its convention of the Reichstag for the 31 of January - granted to Schleicher's cabinet practically only a period of grace up to that date. For a vote of no confidence introduced by the left and the NSDAP meant its immediate fall. The meeting in the house of Ribbentrop on 22January, when Hindenburg wanted to learn through his son and the state secretary of the Presidential Chancellory Dr. Meissner Hitler's opinions about the political situation, has to be considered from this point of view.

The part Meissner played in it and also his general part in the formation of the Hitler Government cannot be established with certainty by means of the data at hand. In any case, being a member of the immediate circle around Hindenburg who finally took the decisive decision, he was by no means uninterested in the matters. His personality has been judged at least very differently. Because of his own interest in the case he can in no event be considered as a classical witness for the judgment of the events of that time. His testimony bears certainly in one point the stamp of unlikeliness. He maintains that he opposed Hindenburg's decision, after the latter decided to appoint Hitler to the office of Reich Chancellor. This is said by the same man who during the session of the Cabinet concerning the "Enabling Law" did not consider it necessary to maintain the right of the Reich President to proclaim laws, the same man who after the events of 30 June 1934 obviously collaborated in isolating Hindenburg from all those who could give him a true representation of the events. I make these remarks because a part of a Meissner Affidavit was read during the hearing of evidence against Papen. Although according to the decision of the Tribunal, the contents (of the affidavit) which was read shall not constitute a basis for the verdict, during the cross examination-questions were nevertheless asked which referred to the affidavit; this could cause erroneous judgment. Besides, the decision of theTribunal relieves me of the obligation to discuss in detail the contents of the affidavit and to indicate a number of inaccuracies which could be easily refuted.

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The hearing of evidence has shown that until the 28 of January, Papen made no attempts whatsoever as regards the formation of a Government. On that day, in view of the imminent convocation of the Reichstag, Schleicher had to bring about a decision. On 1 December 1932 he advised Hindenburg against an open fight against the parliament and stated that the employment of the Armed Forces in a possible civil war would be hopeless. Now he thought that he himself could find no other solution than to beg to be permitted the use of those forces which he previously considered as being insufficient. But since no change in the situation had occurred since that time which could offer reasons for Schleicher's change of opinion, since moreover the position of the NSDAP was strengthened by the elections in Lippe and the general political situation had become still more tense through the attitude of the parties, Hindenburg upheld his decision of 2 December. Thus, the resignation of the whole Schleicher cabinet was inevitable. Now the events had to take their course, which necessarily and logically they had to follow, if the possible use of arms was to be avoided. There was only one solution now: Negotiations with Hitler. Hindenburg commissioned Papen to conduct the negotiations for the formation of the government. On Hitler's part it was clear that he would maintain his inflexible demands namely to take over himself the office of Reich Chancellor. The task, clearly recognized by Papen, was now to set limits to the political activities of the new party which had not proved itself yet on such a large scale.

First of all, a change of course had to be avoided in those ministries in which any radicalism would have been particularly detrimental, namely the Foreign Office and the War Ministry. Hindenburg reserved for himself the right of filling these two key positions. In order not to entrust the new Chancellor with appointing the remaining ministers, as had been customary heretofore, Papen was charged with this task in his capacity of homo regius. He succeeded in limiting the number of National-Socialist ministers to a minimum. Three National-Socialist members of the Government faced eight non-National-Socialists who for the main part were taken over from the former cabinet and who guaranteed a steady policy in their ministries. That was not all; within the framework of the constitution the authority of the Reich Chancellor was to

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be limited in a manner never known before. Papen was appointed to the positi of Vice-Chancellor. His function was not connected with a special department but mainly intended to constitute a counterpoise to the position of the Reich Chancellor. It was decided that Hitler in his capacity of Reich Chancellor should report to the Reich President von Hindenburg only in the presence of the Vice-Chancellor. Thus, a certain control was established when the Reich President formed his opinion about the requests presented by the Reich Chancellor. In view of Hindenburg's personality, of which, according to huma foresight, one could expect a quite considerable influence upon Hitler, this control over the information Hindenburg received promised that a shift towards a radical court would be avoided. This was the part the defendant had in the formation of the Hitler Government. The prosecution sees herein a decisive, conscious step towards the transfer of full power to National-Socialism.

By considering the case objectively, even in retrospect, one can indeed arrive only at the conclusion that in view of the inevitable necessity of ceding the leadership of the cabinet to the National-Socialist party, all possibilities for limiting the importance of this measure were exhausted. Th position of Reich Chancellor left to National-Socialism and the appointment of only two National-Socialist ministers represented the limit of Hitler's originally much more extensive demands and this limit was only reached after long efforts.

For the consideration of the present proceedings it would not matter if t solution adopted on 30 January was the only possible one or not. Even if one were of a different opinion, the only thing that matters in looking at the ca from a criminal angle is whether Papen could consider this solution as a necessity or only as a mere political expediency. Even if, contrary to all t facts one regarded his opinion as a Utopia, it should be taken into considera from the point of view of penal law that one could only speak of a guilt if he had known the future consequences and the future plans of aggression and if in spite of this he had collaborated in the formation of the Government. The facts just mentioned have proved that there is not even the slightest supposi for this.

In considering the case it is of especially decisive importance also tha

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the two ministries which are the most important or which are the only ones to play a part at all in connection with the accusation of breaking the peace; namely, the Foreign Office and the War Ministry, were placed in the hands of men who enjoyed Hindenburg's confidence and had no connection with Hitler and when an unbiased direction of the ministries could be expected. It is not unimportant to consider in this instance what expectations one might have from Hitler's personality and his future policy.

The leader of the opposition party takes for the first time the responsibility. A party, the structure and development of which could certainly occasion many objections and apprehensions. A party which had developed on the basis of an absolutely negative attitude towards the hitherto existing Government leadership. A party which with its noisy appearance had certainly made many concessions with regard to the constitution of its membership. A party which had laid down a new program including points some of which seemed a long way from reality and impossible to carry out and which caused many objections, but which -- and this is the only essential fact within the scope of our consideration of the case -- apparently did not have any criminal character.

On the other hand one cannot disregard the experience taught by life and history that propaganda and responsible work are two very different things, that a party which developes from nothing needs, according to experience, more negative and noisy propaganda than old existing party. Even if the cabinet of 30 January had consisted of National Socialists exclusively, even if a moderating element had not existed in Hindenburg's personality, one could have assumed according to the rules of reason and experience that Hitler, who acceded to power by means of propaganda, would take into account the existing conditions in this practical, responsible work and would show himself in his activities essentially different from what he appeared during the propagandisti preparation of the ascension to power.

A small example had already shown the difference between a party in opposition and in responsible Government work: The same National Socialists with their same program and their same propaganda who now, on the 30th January took possesion of the position of Reich Chancellor had already held the leadership or participated in the governments of some German states. We see Frick, the leader of the Reichstag faction act as responsible minister in Thuringia. His field of action included even the police and we saw the National Socialists zealously tackling the economic problems in these states. But we did not see them commit excesses or not even pursue an unreasonable policy which would have been at least in approximate agreement with their propaganda. Could it not be expected then that in the Reich. together with the greater tasks, the natural sense of responsibility would also increase? And that especially in view of the safty measures taken, matters would not take a dangerous course?

It is not superfluous to discuss Hitler's personality in this connection, Hitler, especially after the failure of the attempt to split off the Strasser group was the absolute autocrat of his party. Undoubtedly he did not show the leadership of his party, in his speeches and in his appearance that reserve which would have been a matter of course for the leader of such a big party.

However, all signs indicated that Hitler had the party under control to such an extent that he would be able to put through also unpopular measures which had to be taken under the pressure of reality. In the questions concerning the participation in the Government he had pursued a policy wise in its tactics

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but unpopular with the impatient masses, because he took the facts into account Could it not be expected then that this man who now had re ched his aim, namely to take over the leadership of the cabinet would abandon the unrealistic ideas he advocated when he was in the ranks of the opposition and would submit to the real exigencies of public and international life?

It is also a general fact known from experience that a man confronted with particularly great aims and with a particularly big responsibility grows as a ruler and as a man in proportion with these aims and this responsibility. In view of this general historic experience one could not assume that a man entrusted with responsibility, after certain attempts which could be interpreted as being promising, would soon revert to the thesis of his former opposition ideas; that after a couple of years this man would throw overboard every positive idea he emphasized - I remember for instance Hitler professing his adherance to the Christian foundations of the State - and that he would even surpass the negative ideas he formerly advocated and increased to an immeasurable extent his aims and his methods. We see now Hitler's full development before us and we are perhaps tempted to interprete his actions during the last years, because they represent something which is so monstrous and therefore so particularly impressive, as being the manifestations of his whole personality, while assuming that during the proceeding time he had already been the same.

It is not possible, within the scope of this trial and based upon the event upon his speeches and especially his actions, to interpret and to understand Hitler psychologically, from the beginning of his political appearance until its end.

His well-known fear of disclosing himself and the mistrust he showed more and more towards nearly everybody in his sphere of life make it particularly difficult to judge his personallity.

The individual facts which occurred, lead however to the certain conclusion that Papen too, despite the fact that he was close to Hitler, could not suspect him in 1933 of being the man he showed himself during later years.

If Papen, in agreement with Hindenburg's wishes, and while executing his orders in his capacity of homo regius did everything in order to prevent the possibility of a radical development, fully aware of his responsibility, he als.

strove with all his energy toward the same goal and beyond the obligations of this task.

After the formation of the cabinet he did not cross his arms and take the easy way, which would have been favorable for him from and opportunist point of view. He undertook to form a counterweight to the National Socialists at the elections of 5 March 1933 through a union of the conservative parties of the right. For someone who would have adopted the National Socialist ideas or even agreed to offer blind obedience to their leader, the next thing to do woul have been to put an end to the opposition of this large, newly constituted conservative group and to let it make its way towards a union with the part which had recently come to power, a way which at that time appeared to many absolutely natural. Papen entered the election contest as leader and organizer of the oppositional group "Black-White-Red". His speeches of that time, excerpt of which I submitted in the document book, show a clear picture of his aims and intentions. They were the affirmation of a nationalistic idea, free from the propaganda licentiousness of National Socialism and its doctrines. In any case, his program was in irreconcilable contrast to what later turned out to be the unpredictable extension and unlimited transgression of the confirmed aims of the NSDAP. The formation of the political action block "Black-White-Red" was to guarantee what Papen had tried to achieve by the composition of the Cabinet of 30 January: a coalition cabinet which, as an inevitable result of parliamentary rules and the entire political situation, left the post of Reich Chancellc to the leader of the strongest Party, who, however, was forced to rule in the framework of a coalition cabinet with all the limitations which derived from it.

THE PRESIDENT: Would this be a convenient place to recess?

(A recess was taken.)

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DR. KUBUSCHOK: I believe that I have made it sufficiently clear by these statements that Papen's collaboration in the formation of the Cabinet of January 30 does not constitute an attempt to place National Socialism in a position of exclusive power. The opposite has been proven by facts.

With regard to the defense, I have gone far beyond what would be necessary in any way for the denial of a verdict of guilty. If, even at that state, somebody had cooperated in really giving the National Socialist Party an exclusive influence, there still would not be any proof to see in this of a preparatory action for the punishable crime in the sense of the accusation.

The program laid down by the National Socialist Party and the statements of the party leader of that time--which, in view of their propaganda value, must be construed much more narrowly from an objective angle-- can be misinterpreted as much as one likes, and one may read into them in retrospect any number of facts which became recognizable later; one can see in all this the way to the crimes set out in the Charter.

In Papen's activities as Vice-Chancellor during the period from 30 January 1933 to 30 June 1934, the Prosecution thinks it can see a continuation of his efforts towards a conspiracy for the purpose of consolidating the position in power of the ruling National-Socialists. The Prosecution has charged him in this connectionwith collaboration in the various laws passed during this period by the Government, which, according to their opinion merely served the aforementioned aims. I will demonstrate, however, how the work of the defendant developed in detail, in particular that he did not deviate from his original policy. The Prosecution deals with a number of laws passed by the Cabinet in the beginning which must be considered as a compromise as far as their political format is concerned, a compromise between the demands of the National Socialists, and the conservative ideas of the other members of the Cabinet.

We see problems being touched which National-Socialism made the subject of discussion and propaganda for years. The conservative members of the Cabinet were then facing the following situation:

The strongest party and the Reich Chancellor could not entirely ignore those questions; they had to be solved in some form.

The principle of every coalition cabinet entails a compromise for both parties. In compromising, the other party need not change its opinion. If, for example, in a coalition cabinet, which is led by a labor party, the program of the labor government which perhaps contemplates a general socialization is to be carried out in practice, the collaboration of the other members of the cabinet will consist in preventing a general extension of the measure and in limiting its effect to those cases which, in their opinion, deviate least from the course followed before. One cannot expect from the strongest party and from its leader, who occupies the constitutional position of Reich Chancellor, to continue the policy of his predecessors. The other members of the coalition must make sacrifices if any governmental activity is ever to be possible.

Since in the framework of this Trial we do not have to judge considerations of political expediency and not even moral conceptions, but only whether what happened was done with a criminal purpose, in the sense of the Charter, the task set for the defense is comparatively simple.

In the legislation we see the ideological problems raised by National-Socialism partly solved. We must conceded to the non-National-Socialist cabinet members involved that, in considering these laws, they thought about a final solution and not about an intermediary stage. Their basis was the experience of the past, the experience of the political life of all countries, namely, that a problem settled by law is normally concluded. It was unthinkable--for it was incompatible with a normal governmental activity

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and the preservation of the authority of a legislative body that after the issuance of a law, a problem which had already been dealt with should continually be considered anew in the following years and each time be brought to a more radical solution. Papen has proved that he carefully tried to maintain the concessions made to the opponent within a more or less endurable limit. The fact that in the laws of that time National Socialist doctrines appear only rarely and in moderate terms, whos sufficiently that the composition of the cabinet of that time with regard to personalities had a retarding influence on the penetration of National-Socialiast ideas.

Without this influence it would not be understandable why Hitler undertook a relatively unpopular limitation of the previously advocated aims of the party.

The hand of the defendant which checked and corrected the shaping of the individual laws is clearly discernable. The classic example for this areondeavours in bringing about the Enabling Act. It was a technical necessity to the legislation during the crisis of that time. The preceding years had shown that owing to the time-consuming deliberations in the Reichstag, urgently needed legislation was not acted upon satisfactorily. Therefore, already in Bruening's time, almost all the legislative power was practically put in the hands of the Reich President, so that the important laws were issued in the form of emergency decrees by unilateral legislative acts of the Reich President. If, due to these compelling reasons, the legislative power could not in practice be left in the hands of the Reichstag, the legislative power thus transferred to the cabinet constituted a compromise. As shown by the result of the Reichstaf vote concerning the Enabling Act, none of the parties, including the Zentrum party filed to recognize this.

The question now arises as to whether the right of the cabinet, where according to the constitution of the Reich

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Chancellor had to establish the fundamental lines of policy, would be limited by the fact that the right of proclaiming laws was reserved for the Reich President. The State Secretary of the Reich President himself declared, in a cabinet session, that he did not think it necessary to charge Hindenburg with the responsibility of the entire legislation because of the latter's right to proclaim laws. Von Papen's direct intervention with Hindenburg immediately afterwards, remained without success, as stated by the witness Tschirschky.

Mr. President, would this be an appropriate time for me to present the questionnaire which was answered by Tschirschky?

THE PRESIDENT: Well, you can comment on it, but you aren't going to read the whole document, are you?

DR. KUBUSCHOK: I will sum it up; with your approval I will give a summary of it.

THE PRESIDENT: Yes.

DR. KUBUSCHOK: This is document 103, which I submitted a while ago.

Question 1 I have already read.

Question 3 concerns the controls just discussed. The witness says that they were surely intended to prevent Hitler and the NSDAP from carrying out their policy.

In the next question the witness affirms the alleged aim of the conservative block: Black-White-Red.

In question five the witness confirms the development, which I still have to present, toward an authoratative government by Hitler.

The answer to question 7 shows that Papen in the Cabinet, in many points, strongly resisted the suggested legislation.

Question 10 concerns the attitude of Papen toward the Church. The last sentence is particularly important: "Von Papen believed, by the conclusion of the Concordat, that Hitler and the NSADP would be placed under so stron contractual

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obligations that the anti-church attitude would be obstructed".

The next answer, 11: "I do not consider it possible that von Papen himself participated in a later violation of the Concordat, or that he used his political conviction for political deceit."

Question 12 confirms what I will say about the Harburg speech.

The answer to question 14 is significant: "I do not know that von Papen expressed thoughts to the effect that the Hitler Government would have to solve Germany's foreign political aims through war and aggression. In the years 1933 and 1934 such ideas would have been observed."

The answer to question 15 is to the same effect.

The answer to question 18 confirms Papen's efforts, after the events of the 30th of June, to reach Hindenburg in order to achieve a change.

THE PRESIDENT: In the answer to question 14, does the answer begin "It is not known" or "IT is known"?

DR. KUBUSCHOK: "It is not known"; "It is not known to me".

THE PRESIDENT: In the translation it says "It is known".

DR. KUBUSCHOK: The answer to question 16 confirms Papen's statement that at all costs he wanted to prevent Germany's withdrawal from the League of Nations.

I have already spoken of question 18. From the answer to 18 it is also shown that the consequence of Papen's attitude after the 30th of June was insistence on his resignation.

Questions 19 to 23 are especially important, and especially important as well is the second sentence of the answer: "It is correct that von Papen accepted the post of Ambassador Extraordinary to Vienna for the sole reason that he hoped to prevent a policy of insanity being carried on in Austria by Hitler and the NSDAP. It is correct that von Papen predicated his acceptance of the mission on Hitler's pledge to forbid

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Party interference in matters pertaining to Austria, to call back Gauleiter Habicht at once, and to refrain from any aggressive action. It is true that these pledges were accepted by Hitler after lengthy protest, and that they were then put down in writing."

In the answer to 25, Tschirschky confirms that during the witness' period of observation, he held on to this policy.

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The answer to Question 26 denies the contents of Messersmith's affidavit. Papen was not concerned with an agressive policy in the Southeastern area.

The answer to Question 27 sums up the attitude of the witness to the effect that Papen did not strive for an Anschluss to be obtained by force.

Then I shall continue on Page 22.

Then, we see Papen again in theforeground when the problem of anti-Semitism had its first legal result. At that time, the situation was the following:

There were the broad masses who for years had been influenced in this direction, a predominantly National-Socialist group who had consistent anti-Semitism as one point on their program. We saw the effects of propaganda on the masses which manifested themselves in the aforementioned individual actions, during the first weeks after the formation of the Hitler government.

The conclusions to be drawn from this situation were clear. A problem which has been stirred up, which had already a pernicious outcome in practice, had to be legally settled. It was clear that in this question National Socialism through its exaggerated propaganda, had contracted a certain obligation towards its followers. It was difficult to determine the extent of the legal limitation which for the incited masses always remained a disappointment. The way out could only be a compromise. The settlement was directed to a field where a change in the hitherto existing situation seemed to be the least severe.

Whereas in accordance with the contents of the "Professional Government Employee law" (Berufsbeamtengesetz) only those were dismissed from their position who occupied their position not on account of their professional qualification, but due to their membership in a political party, all Jewish government employees who were appointed after 1918 were also dismissed. As a rule, a right of pension was maintained. Papen's successful endeavor aimed to limit numerically the effect on the Jewish government employees concerned. He had an audience with Hindenburg, who was especailly approachable on the idea of protecting war veterans. Through Hindenburg's personal influence on Hitler, Jewish war veterans and dependants of fallen soldiers were then excepted from this law.

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Since an overwhelming part of the young government employees who had been employed since 1914, were war veterans, the numerical effect of this exeration was quite considerable. This is made especially clear by the official figures published concerning the conditions in the legal profession, and which were presented in Defense Exhibit No. 33. Furthermore, the defendant is charged for the measures taken against the labor unions. First consideration must be given to the fact that the measures were not carried out by a regulation based on a Reich law. It is moreover important that with the the reshaping of affairs the continuation of labor unions with a Social-Democratic character and a similar influence might have appeared as an anachronism.

Papen's attitude with respect to the labor problem is shown by his speech of 4 March 1933, Defense Document No. 10.

Here, too, it must be considered that at the time the measures were taken one could not have foreseen the extent of their further development. Considering its many rather sound ideas for the settlement of social questions, the German Labor Front at the time of its foundation did not merit the judgement it now deserves for the coercive measures taken at the end.

The amnesty decree, as shown by the hearing of evidence, is no novelty. Also in 1922, in order to set an end to a period of political unrest, amnesty decree was issued, which also pardoned crimes subject to death sentence. The establishment of special courts was a measure of expediency to speed up the sentencing of political offenders, because longer normal proceedings did not safeguard the desired momentum of warning. It is significant that the order concerning crimes of violence was applied for the first time during Papen's Reich chancellorship, National-Socialists in the case of the Potempa murderers (Document 1, pages 6 and 7). Thus it is erroneous to see in the nature of those laws a commendation of actions committed or a promotion of the Nazi idea.

If the prosecution, in criticizing Papen's legislative activity during this time, still engages in considering the Political Coordination Act for the states of 31 March 1933, it touches first of all a question of home policy,

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which is really far outside of a field which could justify a discussion in the sense of the Indictment.

If the indication of the prosecution should have the sole purpose of showing that Papen has in this respect changed the point of view advocated previously, it must be said here that political opinions in general subject to alterations and often must be altered, and that from a change of concept with respect to political expediency measures one can by no means draw a conclusion as to a general change of opinion. As a matter of fact, first the Statthalter Act was designed to eliminate a dualism between the Reich and the states which Papen had always considered as disadvantageous, Papen has always advocated, especially with respect to Prussia, a solution in the sense of Bismarck's time, when the office of President of the Prussian Council of Ministers and that of Reich Chancellor were united in one person.

Thus, this question which ought to be touched only in passing involves not even a change of opinion, much less of change of sentiment.

The following must be considered with respect to the legislative work in the cabinet of the defendant von Papen: His position of vice-chancellor was without an administrative province. The influence, even in political questions which the head of a regular ministry had in cabinet sessions did therefore not exist in the case of Papen. He could only express misgivings or objections from a general point of view, without being able to base them on departmental grounds.

Considering the small number of cabinet session protocols available -- despite all my efforts I did not succeed in procuring the remaining ones, -- the extent of Papen's opposition and that of the other ministers cannot be proved by documents. The fact that he voiced this opposition was revealed in the hearing of evidence. But, as admitted, the success was a small one. Thus it is the duty of the defense, to investigate deeper the reasons why Hitler's powerful position gradually increased and why the influence of the non-National-Socialist ministers became smaller, in short, why the guarantees failed which had been provided when the government was formed on 30 January.

At the beginning the course of the cabinet sessions did not deviate from

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the normal procedure. The questions which arose were made the subject of discussions. Hitler did not try to carry through at any cost the bills which were rejected for good reasons. A clear description to that effect is given by the affidavit of the former minister Hugenberg - Defense Document No. 88.

The elections of March 5, with the overwhelming success of the National Socialist party brought along a substantial change. Beyond its purely parliamentary effects, Hitler was strengthened in his conviction of being the deputy of the German people. He thought that nowthe time had come for him to make use of his right, granted to him by article 56 of the constitution of the Reich, to determine in his capacity of Reich Chancellor the fundamental lines of policy even in case of an opposition on the part of the ministers.

With respect to the constitutional situation I refer to Document No. 22, which shows that in questions of fundamental policy even a majority decision of the ministers was without effect against the decision of the Reich Chancellor. Now, Hitler became very unapproachable to any suggestions. In case of a relevant opposition he thought to have against him an oppositional phalanx, and soon it became evident that objections made in the cabinet were of no use to change Hitler's attitude. At the best, one could hope, as the defendant von Neurath declared as a witness, to influence Hitler outside the cabinet in a direct discussion.

The essential factors in Hitler's development into an autocrat were his increasingly strengthened position with regard to Hinderburg and his ever increasing influence on the Reich Defense Minister von Blomberg.

Hitler's first measures which, in Hindenburg's eyes, showed his endeavor toward the establishment of a strict order, had comstantly improved Hitler's personal relations with Hindenburg. He skillfully undertook to adjust himself to Hindenburg's mentality. Therefore, he succeeded very soon, to abolish the original stipulation concerning the obligation of making joint reports. Thus, Papen was deprived of the main possibility to influence Hindenburg.

The attitude of the War Minister von Blomberg was the second decisive point in Hitler's development.

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The Wehrmacht was a factor of power. Hitler knew that its men and officers were probably essentially unpolitical, but that by no means -- especially as far as its leadership was concerned -- they were inclined to have National-Socialist ideas. An extensively radical course of the government might therefore always give ri[illegible] to resistance on the part of the Wehrmacht. It must be added that owing to his personality, Hindenburg listened especially willingly to reports coming from military circles. As long as the War Minister was not a disciple of Hitler, the latter was prevented from carrying out any radical ideas.

It is not yet possible today to gain an historically clear picture, which would permit one to explain the reason for Hitler's influence on Blomberg. We must state the fact that Blomberg became very soon an ardent admirer of Hitler, and that on his part no sort of resistance could be expected against any extensive radical development whatsoever of Hitler's policy. The 30th of June 1934 proved this very clearly.

In retrospect, the logical consequence of this development becomes clear Hitler could only be impressed by power. The Wehrmacht with its strength of that time was, especially in relation to the position of the Reich President von Hindenburg, a factor of power [illegible]h which, at the beginning, even Hitler and his party would not have been able to cope in case of a commitment of forces. That is the reason for Hitler's endeavor to win Hindenburg's confidence.

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That is the reason for his compara tively cautions maneuvering during the time before Hindenburg's death, which by no means allowed to presume a further stronger development. From the time of Hindenburg's death, Hitler appeared as a dictator without consideration for anything; who, at least in the field of internal policy displaye his ruthless power policy.

In addition to the legislative activity of the cabinet, the prosecution dealt with the question, to what extent Papen was responsible for the oppression of political opponents and for certain acts of violence which occurred during the period which the terminology of that time called "national revolution."

During the cross-examination, Papen was asked whether he knew about the arrest and mistreatment of individual Communist and Social-Democratic personnages named to him. Papen gave an essential ly negative answer. However, he knew that dur to the Decree for the Protection of People and State issued by the Reich P resident, measures had been taken which suppressed the personal liberty of a great number of leftists. The decree was issued by the Reich President, outside Papen's responsibility, and by suppression of the relevant constitutional stipulations. It was established under the impression created by the Reichstag fire, an event which up to the present day has not been clearly elucidated, but for which the official statement that Communist circle had instigated the arson, seemed to be absolutely believable. Especially since the search of the Liebknecht House, the Communist headquarters, produced, according to Goering's declaration, very serious evidence concerning the actions planned against the Reich cabinet. The inquiry was held by a judge of the Reichsgericht (Reich Supreme Court) a personality whose impartiality was beyond any doubt. Therefore, Papen could understand the legal security measures which the administration of the interior thought necessary. But knowledge of the arrest of those politicians is by no means connected eo ipso with the knowledg of the details and of the extent of the measures taken at that time.

During the years of the National-Socialist regime we learned again and again that the knowledge of acts of violence remained

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restricted to the narrow circle of the direct participants. The measures taken before the release of an internee in order to reduce him to silence were evidently successful. Thus, we see again and again that there was always only a small circle of knowing persons which was composed of the immediate environment of returned interne This explains the fact which sometimes amazes one afterwards, namel that quite large circles were not informed of the kind and extent of the excesses committed. It is evident that close relatives and similarly thinking friends of the politicians arrested at that time, knew of what had happened to their people. The extent of the secrecy is shown best by the fact that the witness Gisevius assumes that the conditions in concentration camps did not become generally known to Gestapo officials until 1935.

Thus, it seems to me absolutely explainable that Papen knew very little about the measures which, during the first months, were almost exclusively taken against political opponents of National-Socialism coming from leftist circles. At any rate his knowledge did not go beyond the fact, that in this respect, arrests were made within the scope of the "Decree for the Protection of Nation and State."

It was a different matter, however, with the later encroachment on the rights of church offices and organizations, which to a large extent appealed to him and whom he at once tried to help energetically. The same holds true for the measures in connection with the 30th of June, 1934, which will be discussed later on.

In any case it is a decisive fact that the measures, as far as they were outside the law, were subject to the jurisdiction of the police and the Ministry of the Interior. The law itself is an emergency decree of Hindenburg's. It came about legally. The now broadened conception of protective custody does not in itself constitute a crime.

With regard to anti-Jewish excesses the prosecution accused Papen of having sent a telegram to the New York Times on 25 March 1933, describing the situation in Germany as quiet so far, and of

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having pointed out that individual actions had occurred but were now prohibited by an order from Hitler.

From the sources which were accessible to him, Papen had of course heard of the excesses of which individual SA-men had become guilty in this period which was still unsettled politically. If on 12 March 1933, Hitler categorically forbade such actions by individuals and ordered the strictest punishment for any culprits in the future, Papen could assume with a clear conscience that this order which emanated from the highest authority would henceforth be obeyed.

In passing, it is not uninteresting in this respect to refer to a public announcement of the "League of Jewish Front Soldiers" of 25 March 1933. This proclamation also stated the fact that the situation with respect to the Jewish population was in general quiet, and that excesses were confined to actions by individuals, which had now been forbidden by Hitler. (I shall submit this publication of the League in my Document Book for the Reich Government.)

The same standpoint was taken in a publication of the American Chamber of Commerce in Cologne on 25 March 1933, which publication I shall also present during the hearing of evidence for the Reich Government.

The Jewish boycott which was announced some days later and which was carried out on 1 April 1933, was, contrary to the opinion of the prosecution, no government measure, but exclusively a party measure which Papen, too, sharply opposed as well as others in the cabinet. The publication of the "Times", submitted with Neurath's defense Exhibit No. 9, proves that over and beyond this Papen made representations to Hindenburg and called for the latter's intervent with Hitler.

For the rest, one must take into consideration the fact that the Jewish boycott had been announced as a defensive counter measure which was to be limited in time and to be extended only to business life. It had been expressly ordered that any use of force was forbidden and that excesses were to be prevented by corresponding measures. In its presentation of matters of domestic policy the

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prosecution has merely shown that through the measures taken, the position of the National-Socialist party was to be strengthened, so that it should then be possible to turn to the aims of the foreign policy of force which had been decided upon beforehand. Still more important than the discussion of domestic conditions is therefore an examination of the foreign policy of the Reich during the time Papen was Vice Chancellor.

Hindenburg's reservation that he would appoint the Foreign Minister and the appointment of von Neurath to this post when he had been Foreign Minister until then and was not a National-Socialist leads one necessarily to expect a development of foreign policy along the course hitherto taken.

Hitler's first measures seemed not only to justify this expectation but even to go beyond it. The ifrst speech on matters of foreign policy held on 17 May 1933, dealt with Germany's relations to Poland which in the past had never been entirely satisfactory. The annexation by the Poland which had newly come into existence of large territories formerly belonging to the German Reich had brought with it a latent tension between these states. Hitler was the first to take up the problem and to resolve, according to his declaration in the Reichstag, to bring about a policy of friendship with Poland by recognizing the Polish state and its needs. If one considers the fact that the though t of renouncing all claims to a revision against Poland was not only generally unpopular but also stood in sharp opposition to previous propaganda, it was impossible to foresee the development of later years. One was necessarily convinced that here was an internally strong government supporting its domestic reconstruction with a policy of peace abroad.

Germany's adherence to the Four Power Pact, and its renewed profession of adherence to Locarno serve to underline this conviction. The struggle in foreign politics for ideological values lay in a different direction. The question of eliminating the clause in the Versailles Treaty which stipulates Germany's exclusive guilt and the que stion of equal rights for this large country which had pursued a persistent policy of peace since 1918, were demands which on

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one hand did not seem to burden the other side with unbearable sacrifices and which were yet suited to remove from the German people an ideological burden which it considered a pressing one.

Germany's withdrawal from the disarmament conference must be considered from these viewpoints. It took place after long drawn out negotiations had produced no positive results and because it was in no way evident that the powers were inclined to bring about in future a fulfillment of the German demands. The declaration of the Reich Government and of Hindenburg that this step was to be looked upon as a tactical step, and that the same objectives were to be retained, namely the preservation of peace under recognition of equal rights, all this therefore had to appear credible and reasonable.

From the same points of view Papen also approved of this step. With regard to the simultaneous withdrawal from the League of Nations opinions could have differed. Here, too, one might hold the view that the withdrawal was necessary as a movement of protest and that one could prove through factual efforts in the matter itself that it was intended to adhere to a policy of peace.

Papen figured among those who felt obliged to advise against withdrawal from the League of Nations, even though he himself had experienced as Reich Chancellor that the negotiations in the large and manifold assembly of the League caused certain difficulties in some questions. On the other hand, however, he was so convinced of the institution of the League of Nations as an instrument of agreement and of facilitation of the technical possibilities for agreement that he wished to avoid withdrawal from the League of Nations. He advocated this opinion very strongly. Since he could not persuade Hitler in Berlin he followed him to Munich shortly before the decision in order to lay his well-founded opinion before him there. Ergo we see Papen here working activly in a field for which in his position as Vice-Chancellor he actually has no responsibility; aiming at a solution which if one takes as a basis the views of the prosecution concerning the withdrawal from the League of Nations can only be considered as a step towards peace.

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Because of the fundamental importance of the withdrawal from the League of Nations the measure was submitted to the German people in the form of a plebiscite enabling it to state its opinion. On the occasion of this plebiscite, Hitler, the government, and Hindenburg, issued proclamations which emphasized expressly that this step was not intended to constitute a change of policy, but merely a change of method. Preparations for the plebiscite were carried out in line with this statement.

The prosecution accuses Papen of having glorified in his Essen speech the successes of Hitler's government and of having advocated an unconditionally affirmative attitude towards the questions to be decided by the plebiscite.

If Papen did the latter, it was because he felt obliged to do so, the decision having been cast once and for all and having to be justified before the foreign countries. If the responsible leaders actually did not strive for anything but a change of methods, no objections could be made. The position of German foreign policy would have been shaken if the people had shown in the plebiscite that it opposed the measure already taken. It was therefore quite natural to approve of this policy in public within the framework of the solemnly given assurances. Moreover, it could not be overlooked that in a plebiscite on government measures the vote of confidence could not pass over internal politics altogether.

We have to take the date of the speech into consideration. In November 1933 Hitler had made good progress in the field which was in the foreground of necessity and interest:

Namely, in the easing of economic distress and the elimination of unemployment. His measures were on a large scale and at first showed apparent success. Here, too, one cannot measure things by the same standard as one applies to them today in full knowledge of their development. At that time the course taken hitherto seemed justified by its success. In his electoral speech which demanded a vote of confidence in the government for the purpose of agreement on a matter of foreign policy, Papen felt obliged to refer appreciately to this positive development in internal politics.

In his introductory speech Mr. Justice Jackson acknowledged himself, in the following words, the conditions in 1933 which have been described: "After the reverses of the last war we saw the German people in 1933 regain their position in commerce, industry and art. We observed its progress without distrust and without malice." Those are the words of Justice Jackson.

Of all problems of foreign policy it was perhaps the question of German French relations which interested Papen most. In his own testimony he has stated his views on this subject and has related how, as early as in the twenties, he collaborated in various political and or Catholic bodies with the idea of promoting understanding and a rapprochement between France and Germany. I refer in this connection to Document No. 92 and to the meeting between Papen and the French Colonel Picot which is described therein and which is characteristic of Papen's attitude.

In the new government, too, Papen paid special attention to this question as commissioner for the Saar territory. We see how he attempted to avoid also in the Saar question everything that could in any way impair the relations between the countries, even if only temporarily. From this came his suggestion that there should be no recourse to a plebiscite which might give renewed impetus to political chauvinism in both countries. Hitler himself, not only before he took over power but also as responsible chief of the cabinet, had stated time and again that Germany has no intention of bringing up the question of Alsace-Lorraine, but that the Saar question was the only problem still to be settled between the two countries. And in so doing he followed the suggestions of Papen entirely, which aimed at a peaceful settlement.

Furthermore, Papen is accused of having deceived the contracting party, namely the Vatican, when he concluded the concordat in July 1933.

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By concluding the concordat Papen had intended merely to strenthen Hitler's position to enhance his reputation abroad.

The hearing of evidence has shown that the concordat in its effects, too, was a bilateral pact, and that the legal obligations of the concordat offered certain legal protection to the violated party, also, during the Treaty violations on the part of Germany which followed soon afterwards.

The question there of Archbishop Groeber concerns the conclusion of the Concordat. I refer to Document 104 which I submitted today, and I summarize it as follows :

Archbishop Groeber is of the conviction that the conclusion of the Concordat was on the initiative of Papen. Furthermore, he confirms that Papen succeeded in persuading Hitler to the conditions of the Concordat. In the answer to Question 4, in particular, he confirms that Papen's activities while the Concordat was concluded were dictated by his positive position as regards religion. Finally he confirms, in the answer to Question 6, that the Concordat was a basis and a support in the later persecution of the Church. Answer 7 confirms that the community of German Catholic workers, which I will mention later, was not an organization protected by the Concordat. In any case, it is entirely wrong to suppose that Papen had any knowledge of intended future violations of the treaty and that he had brought about its conclusion while he was in possession of such information. If he had wished to enhance Hitler's reputation abroad, this means would have been the least suitable that could be imagined. A struggle against the church without the Concordat would have been a matter which, it is true, met with an unfavorable reception abroad but which nevertheless would have been an internal German affair. Through the existence of an interstate treaty these church persecutions became simultaneously a violation of an international treaty with resulting effects of a special nature upon prestige. One cannot conclude a treaty for the purpose of gaining prestige if immediately after its conclusions one proceeds to violate the same treaty. This deliberation alone already refutes the assumption of the prosecution. Beyond this the accusation of the prosecution is of symptomatic importance.

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Every action of Papen's which has somehow come to light must be interpreted in the sense of the conspiracy theory to Papen's disadvantage, and the simplest recipe for this is to place the later development into the foreground claiming Papen's cooperation and knowledge in this development, and to designate his previous contrary statements of opinion as ambiguous and double-faced. This recipe is simple if one considers the knowledge of later developments in retrospective as self-evident and if one does not picture the ture, factual situation at the time; above all, if one makes no effort to reexamine the logic in the original intention which is claimed and the furth developments it had. Only in this manner can one, as in this instance, achi ve a result which on closer consideration presupposes the folly of the perso acting at the time.

But quite apart from these deliberations the attitude of the defendant towards religious matters prohibits the slightest doubt in the sincerity of his intentions. In the hearing of the evidence it was set forth that not only his closest personal advisors in church affairs but also the highest dignitaries of the church who were in closest personal as well as professiona contact with the defendant in these matters, emphasized that his attitude as a Catholic was absolutely free of reproach at all times.

The lack of foundation of the whole indictment with regard to church questions is already made clear by the confutation of the assertion of the prosecution that Papen himself broke the Concordat by dissolving the "Work Association of Catholic Germans". I refer in this respect to the unequivocal testimony of the former secretary of the "Work Association of Catholic Germa Count Roderich Thun, Defense exhibit No. 47. It must be stated, however, tha Papen not only saw with regret the subsequent violations of the Concordat, by the Reich but that he actively tried to oppose them. The entire activitie of the "Work Association of Catholic Germans" consisted practically of nothi else but the establishment of such violations of the Concordat in order to furnish Papen with a basis for his constant interventions with Hitler. After Papen's departure for Vienna the practical opportunity for such interventio ceased to exist.

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From all of Papen's speeches it is evident that his attempt at safeguarding the churches did not emanate from considerations of political expediency of the day but from his fundamental religious attitude. I believe there is no speech in which he did not express himself on this problem, emphasizing time and again that only the Christian philosophy of life, and thus the Christian churches, could be the foundation for the orderly government of a state. In just this Christian foundation he saw the best protection against the tendency of the party to give preference to an ever increasing extent to the idea of sheer might over that of right.

With regard to Papen's report to Hitler of 10 July 1035 (PS 2248) which was submitted during the cross-examination, the prosecution fell victim to a quite obvious misunderstanding. Papen refers in it to the favorable result there would be in the field of foreign politics if one could succeed in eliminating political Catholicism without touching the Christian foundation of the state. Papen does not state here his opinion on the past and present situation but furnishes advice for the future. The contents of this advice are definitely positive in the ecclesiastical sense. They state that one may eliminate political Catholicism but the purely ecclesiastical interests themselves, that is the christian foundation of the state, must remain untouched. These directives destined for future times obviously contain criticism of the past as well. We see here how, in connection with activities in the field of foreign policy, matters are discussed and brought up to Hitler which in themselves belong to another field.

In his own testimony Papen stated his opinion of the accusation of the prosecution that as a good catholic he should have resigned after the Pope had issued his Encyclical Letter "With Grave Apprehension" of 14 March 1937. Papen could refer, in this connection, without any criticism and with full approval, to the standpoint of the church itself, which has always been of the opinion that one should hold a position so long as it still offers the slightest opportunity for positive work. Owing to this wise attitude and to its feeling of responsibility for the German Catholics, the Church did not completely break with the Thrid Reich until the end. One cannot ask an individual Catholic to take any other standpoint. This all the less as Papen, in his purely foreign political activities, came into no conflict whatsoever with his Catholic conscience.

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The accusation that in the fall of 1938 he should have protested to Hitler about the treatment of Cardinal Innitzer is also lacking in foundation. Papen himself can no longer remember today when and in what form he heard of these occurrences at all. The German press did not publish anything about it and in no case did such matters reach the public via internal Church channel as the prosecution assumes. In any case at that time Papen had no possibility whatsoever to intervene, being merely a private person and besides in bad standing with Hitler for the moment.

I have already dealt with Hitler's development into an autocrat. After the abolishment of joint reports to Hindenburg, Papen's influence was reduced to minimum. Protests in cabinet sessions coming from a single man, who was unable to base these protests on requirements of his own department, were of purely declaratory nature. Meanwhile the circle of applying nazistic doctrines in practice was closing more and more. It became clear that the willingness of the first days to compromise in agreeing to a rule by coalition was slowly abandoned and that the national socialist idea kept gaining ground in all fields. It was clear to Papen that he could not follow that course. It was likewise clear that in the frame work of his official position he could not alter the general trend, despite his efforts to help in individual cases. On the other hand his theoretically still existing position of Vice-Chancellor gave him certain weight in public life. Thus he had to face the problem, whether he should start forth with public criticism of prevailing abuses as a last attempt to gainsay influence upon the development by public discussions of the problems. In case of failure, he would have at least achieved the public branding of those abuses, by a responsible party, even if

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as a natural consequence Papen would have to give up his position and would thus no longer be able to aid many people in individual cases.

In his Marburg speech of 17 June 1934 Papen distinctly branded all abuses which had become apparent until that time. Such extensive public criticism remained the only instance in the history of the "Third Reich".

He realized that the danger of Nazism lay in the fact, that its different doctrines in practice dovetailed into an encircling enclosure suppressing the entire public life. Had that enclosure been breached at a single spot, the dangerous character of the entire system could not have been maintained. If only one of the points discussed would have met with success when carried out in practice, it would have shown a total change of conditions. The system objected to could not have existed another day if the freedom of public speech, demanded by Papen, would have been granted. It could not have been upheld, if the conception of justice and of equality before the law were recognized. It could not have existed if freedom of religion were granted. A nazistic racial theory cannot be upheld if the maxim of the individual's equality, common to all confessions, is advocated.

Each of Papen's attacks in his Marburg speech -- he had dealt with the racial issue already in his Gleiwitz speech -- was in itself an attack upon the development of the entire Nazi doctrine. The audience was clearly shown by a leading member of the opposition in the government, where the entirety of the abuses originated from.

The consequences for Papen of such an action were obvious to begin with.

Either Hitler would take into consideration the state of affairs, after it had become a matter of public discussion or Papen was going to offer his resignation, since for further cooperation he could no longer reconcile his viewpoint with the path chosen by Hitler.

Evidently Hitler in his position at that time did not consider it necessary to make a concession to public opinion by deviating from his line of action. He tried to kill the opposition by forbidding the publication of the speech and by penalizing its distributors. Papen resigned. Hitler did not accept his resignation immediately, since he obviously had to take Hindenburg into consideration, wishing to clear up the situation first of all with him.

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Meanwhile the events of June 30th took place.

What fate had been destined for Papen in the course of these events will probably never be known definitely. Particularly, it will never be elucidated whether different people were moved by different intentions.

The improvisation of the action becomes best apparent in the way it was carried out against the office of the Vice-Chancellor. Bose was the first victim in the very building of the Vice-Chancellery. Jung, who was arrested outside of Berlin, was similarly shot. His fate, though, became known to Papen and the public only much later, as it had been hoped at the beginning that he not only had left Berlin but had gone to Switzerland, having been warned by the measures taken against the Marburg speech. The other members of the staff, who could be apprehended, were taken into custody by the police and later sent to concentration camps. As to Papen himself one evidently hesitated to make a final clear decision on his fate. His close relationship to Hindenburg would seem to indicate the advisability of not burdening the list of victims of June 30th with so prominent a name, after it had been burdened enough in relation to Hindenburg with the crime, against Schleicher, camouflaged though as self-defense.

Anyway, within the framework of the accusation it suffices to establish that whatever Papen's fate has been in the end, the measures taken against him and his people demonstrate his absolute opposition against Hitler and the Nazi policy.

During the cross-examination the prosecution presented letters to Papen, which outwardly seem to show at first a certain divergence from his usual attitude.

In those letters Papen assures Hitler of his attachment and loyalty and hides his real and material desires under polite phrases which otherwise were in no way customary in his relations with Hitler. It may appear surprising, that a man who opposed the system, who had been persecuted for that reason and upon whose associates such incredible things had been inflicted, chose such a form of letter. But for a fair judgment a correct understanding of the state of affairs at that time is required. A state of lawlessness existed at that time. It offered a favorable opportunity to get rid of troublesome opponents

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in the course of these measures. The examples of Schleicher, of Klausner and others have sufficiently shown that. There was no way of knowing beforehand when and in what manner the measures taken against the persons already involved in these matters would end. One believed almost hysterically to see in every man with opposing ideas a conspirator with these SA groups, who sooner or later were really going to revolt against Hitler.

How far indeed persons of the right on the ground of their opposing attitude had joined hands with the SA, a powerful factor at that time has not been established yet with certainty. Anyhow it could not be judged at that time whether or not Hitler's statements in regard to persons not belonging to the SA were correct.

For Papen the situation at that time was as follows: He knew of Bose's assassination, but was as yet unaware of Jung's fate. He hoped that the latter had escaped. Three of his co-workers were in a concentration camp. These had first to be released from there. And also for the future the suspicion had to be dispersed, that any one of them as well as Papen himself had been in contact with the SA circles in revolt.

If Papen ever wished to make any representations with Hitler, the first requirement for any possible success would be to put a distance between him and such SA circles. Papen therefore felt obliged to assure Hitler of his loyalty and faith.

Besides Papen has been convinced for years that Himmler and Goebbels were behind the attack on him and the Vice-Chancellery and that Himmler in particular wanted to eliminate him, having been prevented from doing so only by Goering and that therefore in order to safeguard himself against these two, it was necessary to assure Hitler of his correct attitude.

In judging these letters it is not their form, but their contents which is essential. The alpha and omega of the letters is the demand of rehabilitation for his own person and his associates. He demands court action. He advises Hitler to strike out from his indended Justification Law all actions directed against persons outside the SA-circle.

But what is the meaning of these demands of Papen? Their real significance is the upholding of what is legal against the illegal actions of the 30th. He

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demands an objective and legal clarification of all that is to be condemned in the events of June 30th. When we consider these events of June 30th we must bear in mind that these events fell into two parts. The first were measures against the SA leaders, who radicalism had always been known and who were always to be connected with acts of violence and independent activities, which in the past had had to be condemned. An intervention against such people coul be explained as an act of state-defense against dangerous forces which were ever ready for revolt.

The other part consisted of measures against personalities outside the SA-circle. A court investigation would have resulted in the clearing up of these events and in the condemning of the responsible persons.

I believe that when in cool criticism one pictures to oneself the events at that time, one can only arrive at the conviction that Papen's situation the aims could actually have been no other, than that which he had proposed to Hitler a rehabilitation by means of a court action of those persons who had bee unjustly persecuted and the elimination of a summary justification of the measures in question by a law. If we come now to the heart of the matter and to what was actually desired we cannot give to the form of these letters the meaning which is ascribed to them by the prosecution.

That the form in particular did not represent an approval of the measures of June 30th, but was merely used for the above-mentioned purpose, is best show by the examination of the letter of 17 July. Though at that time Papen had achieved the release of his co-workers from the concentration camp, his other demands were not fulfilled by Hitler. So we now see a piece of writing which is entirely lacking even in the most elementary forms of politeness. Merely objective statements and objective requests. A piece of writing signed only with the name of Papen, without even a closing courtesy formula.

As to the affair in question Papen does not retreat from his line for a single moment: He holds fast to his resignation and demands immediate action o it, as the letter of 10 July 1934 shows (Doc. D 17/5). He refuses to play any part in future government activities. He leaves Hitler immediately after having had him called out of the Cabinet session on 3 July. He keeps aloof from the Reichstag session, at which the Justification Law has been confirmed.

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He rudely declines the offer to accept the confortable post of ambassador at the Vatican. Such was his negative attitude.

As to the positive one, he strives to bring about the intervention of the Wehrmacht. He turns to his friend Colonel General von Fritsch. Blomberg, owing to his attitude, is out of question. Fritsch will not act without a formal order from the Reich President. So now Papen endeavors to get in touch with Hindenburg. But Hindenburg's entourage keeps him off.

THE PRESIDENT: You might stop there.

(The Tribunal adjourned until 23 July 1946, at 1000 hours.)